VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1966

No. [redacted] 15

ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.

No. [redacted] 17

CALUMET HARBOR TERMINALS, INC., ET AL., APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.

No. [redacted] 20

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

NO. 445 FILED AUGUST 11, 1966
NO. 494 FILED AUGUST 29, 1966
NO. 543 FILED SEPTEMBER 7, 1966
PROBABLE JURISDICTION NOTED NOVEMBER 15, 1966

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 445

ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.

No. 484

CALUMET HARBOR TERMINALS, INC., ET AL., APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.

No. 543

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., APRIL 11, 1966

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[fol. 97]

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

APPLICATION OF ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY for Authority to Construct and Operate Over Certain Lines of Railroad in Cook County, Illinois.

APPLICATION—October 19, 1956

By this application under Section 1(18) of the Interstate Commerce Act, and by the accompanying application being filed under Section 5(2) of the Act by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and Chicago South Shore and South Bend Railroad, hereinafter referred to as the Illinois Central, Pennsylvania, and South Shore, respectively, the Illinois Central, Pennsylvania and South Shore seek to extend their operations to serve the Lake Calumet Harbor District near Chicago, in Cook County, Illinois. This extension of operations will be conducted over certain existing tracks and certain tracks that must be constructed. This application under Section 1(18) seeks authority to construct and operate over these latter tracks. The accompanying Section 5(2) application seeks authority to acquire trackage rights over existing tracks and the tracks to be built.

In support of this application, applicants respectively show:

(a) The exact corporate names of the applicants are Illinois Central Railroad Company, Kensington and East- [fol. 98] ern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company. The Philadelphia, Baltimore and Washington Railroad Company is hereinafter referred to as the PB&W. Kensington and Eastern Railroad Company is hereinafter referred to as the K&E.

(b) Applicants Illinois Central and Pennsylvania are each common carriers by railroad subject to the Interstate Commerce Act. The PB&W is a corporation organized to construct and operate a railroad but is not an operating carrier. Its present properties and those acquired by it are operated by the Pennsylvania under the terms of a lease approved by the Commission in Finance Docket Nos. 1466 and 19111, et al. The K&E is a corporation organized to construct and operate a railroad but is not an operating corporation.

(c) The Illinois Central was incorporated under the laws of the State of Illinois, February 10, 1851.

The Pennsylvania was incorporated under an Act of the Commonwealth of Pennsylvania, approved April 13, 1846.

The PB&W was incorporated as a corporation of the states of Delaware, Maryland, and the Commonwealth of Pennsylvania pursuant to an agreement of consolidation dated April 3, 1916, filed in the respective offices of the Secretary of State of the states of Delaware and Maryland, in the office of the Secretary of the Commonwealth of Pennsylvania, and recorded in the Recorder's Office for New Castle County, Delaware, on September 15, 1916.

The K&E was incorporated under the laws of the State of Illinois, October 8, 1904.

[fol. 99] (d) The K&E proposed to construct a lead track off its present line of railroad, over which the Illinois Central will operate, as shown in green on the attached map.

The Illinois Central proposes to construct and operate over an extension of the aforesaid K&E lead, as shown in red on the attached map.

The Pennsylvania proposes to construct a track on behalf of the PB&W over which the Pennsylvania will operate under the terms of its lease of the PB&W connecting the aforesaid Illinois Central track to and connecting with tracks of the Chicago Regional Port District, as shown in yellow on the attached map.

(e) All the construction for which authority is sought herein will be located in Cook County, Illinois.

(f) The route and termini of the lines it is proposed to construct are shown on the attached map.

(g) The track to be constructed by the K&E will be 2900 feet in length, or approximately .55 mile. The track to be constructed by the Illinois Central will be 630 feet in length, or approximately .12 mile. The track to be constructed by the Pennsylvania on behalf of the PB&W over which the Pennsylvania will operate will be 4,030 feet in length, or approximately .76 mile.

(h) The proposed construction is required in order that the Illinois Central, Pennsylvania, and South Shore may serve present and future industries, elevators, warehouses, docks and piers in the Calumet Harbor Port area.

[fol. 100] (i) Each applicant will finance its proposed construction out of its current funds. The Illinois Central owns all of the capital stock of the K&E. The Pennsylvania is the lessee of the properties of the PB&W.

(j) The resolution authorizing the making and filing of this application on behalf of the Illinois Central was adopted by its Board of Directors at a meeting in Chicago, Illinois, September 21, 1956.

The resolution authorizing the making and filing of this application on behalf of the K&E was adopted by its Board of Directors at a meeting in Chicago, Illinois, September 14, 1956.

The resolutions authorizing the making and filing of this application on behalf of the Pennsylvania were adopted by its Board of Directors at meetings in Philadelphia, Pennsylvania June 27, 1956, and September 26, 1956.

The resolution authorizing the making and filing of this application on behalf of the PB&W was adopted by its Board of Directors at a meeting held October 8, 1956.

(k) Correspondence with regard to this application should be addressed to each of the following:

Mr. Erle J. Zoll, Jr., General Commerce Attorney,
Illinois Central Railroad Company,
135 East Eleventh Place,
Chicago 5, Illinois.

Mr. Robert H. Bierma, General Attorney,
The Pennsylvania Railroad Company,
652 Union Station,
Chicago 6, Illinois.

[fol. 101] (l) A map showing the lines which applicants herein seek authority to construct is attached. Three extra copies of the map are submitted with the original of this application.

Wherefore, applicants pray that your Commission issue a certificate of public convenience and necessity authorizing the construction and operation for which authority is herein sought.

Respectfully submitted,

Illinois Central Railroad Company, Kensington and Eastern Railroad Company, by Wayne A. Johnston; The Philadelphia, Baltimore and Washington Railroad Company, By J. P. Newell; The Pennsylvania Railroad Company, By H. H. Perler.

Kensington and Eastern Railroad Company, Illinois Central Railroad Company, Joseph H. Wright, Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois.

The Philadelphia, Baltimore and Washington Railroad Company, The Pennsylvania Railroad Company, Robert H. Bierma, 652 Union Station, Chicago 6, Illinois; Windsor F. Cousins, 1740 Suburban Station Bldg., Philadelphia 4, Pa.

Chicago, Illinois, October 19, 1956.

[fol. 106]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

APPLICATION OF ILLINOIS CENTRAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD for Authority to Acquire Trackage Rights Over Certain Lines of Railroad in Cook County, Illinois.

APPLICATION—October 19, 1956

By this application under Section 5(2) of the Interstate Commerce Act, and by the accompanying application being filed under Section 1(18) of the Act by the Illinois Central Railroad Company, Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company, hereinafter referred to as the Illinois Central, K&E, PB&W, and Pennsylvania, the Illinois Central, Pennsylvania, and Chicago South Shore and South Bend Railroad, hereinafter referred to as the South Shore, seek to extend their operations to serve the Lake Calumet Harbor District near Chicago, in Cook County, Illinois. This extension of operations will be conducted over certain existing tracks and certain tracks that must be constructed. The accompanying application under Section 1(18) seeks authority to construct

these latter tracks. This Section 5(2) application seeks authority to acquire trackage rights over the existing tracks and the tracks to be built.

In support of this application, applicants respectfully show:

[fol. 107] I.

Contents of Application

* * * * * * *

[fol. 118]

(c) Information Respecting the Nature of the Transaction Proposed and Terms and Conditions thereof

1. By this application (a) the Illinois Central seeks trackage rights over a line of the K&E and over lines to be constructed by the K&E and by the Pennsylvania on behalf of the PB&W; (b) the Pennsylvania seeks trackage rights over lines of the Illinois Central and the K&E and over lines to be constructed by the Illinois Central and the K&E; and (c) the South Shore seeks trackage rights over lines to be constructed by the K&E, Illinois Central and by the Pennsylvania on behalf of the PB&W.

2. The agreements pursuant to which the proposed transaction is to be effected are presently being negotiated.

3. There are no financial or other relationships, direct or indirect, which are not disclosed in this application.

4. The Pennsylvania seeks trackage rights over the line of the Illinois Central extending from a connection between those two lines at Riverdale, Illinois, shown as "A" on the map, Exhibit 6, to a point on the Illinois Central shown as "C" on the map, north of Kensington, Illinois, a distance of 6.36 miles.

The Pennsylvania and Illinois Central seek trackage rights over the existing line of the K&E extending from Kensington, Illinois, shown as "K" on the map, to a point on the K&E, shown as "L" on the map, a distance of 2.36 miles.

[fol. 119] The Illinois Central, Pennsylvania, and South Shore seek trackage rights over the line sought to be constructed by the K&E in the accompanying Section 1(18) application, extending between points "L" and "D" on the map, a distance of .55 mile.

The Pennsylvania and South Shore seek trackage rights over the line sought to be constructed by the Illinois Central in the accompanying Section 1(18) application, extending between points "D" and "E" on the map, a distance of .12 mile.

The Illinois Central and South Shore seek trackage rights over the line sought to be constructed by the Pennsylvania on behalf of the PB&W in the accompanying Section 1(18) application, extending between points "E" and "F" on the map, a distance of .76 mile.

5. Not applicable.

6. The value of the properties involved in the proposed transaction has not been found by the Commission, and there has been no appraisal of the value of such properties for the purposes of the proposed transaction.

6. Not applicable.

8. Not applicable.

9. Not applicable.

10. Not applicable.

[fol. 120]

(d) Facts and Circumstances Relied Upon to Show that the Proposed Transaction is Within the Scope of Section 5(2)(a) of the Interstate Commerce Act, Will Be Consistent with the Public Interest, and Will otherwise Be within the Requirements of Section 5.

1. In the case of any transaction:

(1) That the extension of operations by the applicants to the Calumet Harbor Port area is not only consistent

with the public interest but required by the public convenience and necessity is indicated by the other statements made in this application and in the accompanying Section 1(18) application of the K&E, Illinois Central, PB&W and Pennsylvania, and will be further indicated in those carriers' return to the Commission's questionnaire.

(2) The financial considerations involved in the proposed transaction are fully indicated by the other statements made in this application and in the accompanying Section 1(18) application of the K&E, Illinois Central, PB&W and Pennsylvania, and will be further indicated in those carriers' return to the Commission's questionnaire. By extending their operations to the Calumet Harbor Port area as proposed, applicants expect to participate in the transportation of a substantial volume of traffic.

(3) The proposed transaction will promote and provide adequate transportation service to the public.

(4) There will be no increase in total fixed charges resulting from the proposed transaction.

(5) The proposed transaction will result in increased work opportunities for applicants' employees.

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[fol. 416]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

APPLICATION OF ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY for Authority to Construct and Operate Over Certain Lines of Railroad in Cook County, Illinois.

APPLICATION OF ILLINOIS CENTRAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD for Authority to Acquire Trackage Rights Over Certain Lines of Railroad in Cook County, Illinois.

PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY and PULLMAN RAILROAD COMPANY FOR LEAVE TO INTERVENE—November 16, 1956

Come now your petitioners, Chicago, Rock Island and Pacific Railroad Company (hereinafter sometimes referred to as "Rock Island") and Pullman Railroad Company (hereinafter sometimes referred to as "Pullman"), and respectfully represent that they have an interest in the matters involved in the above-entitled proceeding and desire to intervene in and become parties to said proceeding, and for grounds of the proposed intervention say:

I.

Petitioner, Chicago, Rock Island and Pacific Railroad Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, is [fol. 417] admitted to do business under the laws of the

State of Illinois and is a common carrier by railroad engaged in the interstate transportation of freight and passengers in and through the State of Illinois and many other states.

Petitioner, Pullman Railroad Company, is a railroad corporation organized and existing under and by virtue of the laws of the State of Illinois. All the capital stock of Pullman was acquired by Rock Island under authority granted by the Commission on November 17, 1949 in F.D. No. 16252, at which time the Commission also approved Rock Island's operation of the Pullman properties under lease, the term of which has been extended to 1965 by authority of the Commission granted on January 20, 1955. The railroad properties of the Pullman, including operating rights, consist, among others, of a line of railroad extending from a connection with the line of the Rock Island at or near the intersection of 95th Street and Stony Island Avenue, Chicago, Illinois, to points on the shore of Lake Calumet, including the Chicago Regional Port District, a distance of between four and five miles, together with various yard, side, spur and industrial tracks and their appurtenances. These properties and rights of Pullman, by virtue of the above referred to agreement, have been integrated into Rock Island's system operations.

[fol. 418] II.

By applications filed in this proceeding under Sections 1(18) and 5(2) of the Interstate Commerce Act, applicants seek to extend their lines of railroad and operations to serve the Chicago Regional Port District which is located adjacent to petitioners' railroad tracks and is being served by them exclusively. The sole underlying purpose of applicants in extending their lines of railroad and operations to serve the Chicago Regional Port District is to divert to their lines traffic handled by petitioners.

III.

Petitioners oppose the applications filed under Sections 1(18) and 5(2) of the Act on the grounds, among others, that they are serving and will continue to serve, adequately the Chicago Regional Port District; that they have expended large sums of money in the construction of facilities to serve said Chicago Regional Port District adequately; that they propose and are prepared to expend further sums of money to keep themselves in a position to serve said Chicago Regional Port District adequately; that they are capable of performing adequate service in the future to meet the rail transportation needs of the Chicago Regional Port District; that they are entitled to retain the rail traffic of the Chicago Regional Port District; that there is no reason sufficient in law for applicants' ex- [fol. 419] tension of their lines of railroad and operations to serve territory heretofore served exclusively and adequately by petitioners; that the expenditures of sums of money required to be spent by applicants to serve said Chicago Regional Port District cannot be justified either in fact or in law; and that applicants' extension of their lines of railroad and operations to serve territory heretofore served exclusively and adequately by petitioners cannot be supported by public convenience and necessity, could mean only a duplication of rail facilities, and would create unsound and uneconomic conditions in transportation.

Wherefore, Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company pray leave to intervene and be treated as parties hereto with the right to have notice and appear at the taking of testimony, produce and cross-examine witnesses and be heard by counsel upon brief and oral argument, if oral argument is granted.

Dated at Chicago, Illinois, this 16th day of November, 1956.

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois; [fol. 420] Joseph B. Fleming, John Bordes, Prudential Plaza, 130 E. Randolph Drive, Chicago 1, Illinois, Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 East Randolph Drive, Chicago 1, Illinois, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 421]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., CONSTRUCTION, ET AL.

In the Matter of Petition for Leave to Intervene in Opposition to the Application.

Present: Richard F. Mitchell, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

ORDER ALLOWING ROCK ISLAND AND PULLMAN RAILROAD COMPANY TO INTERVENE—November 29, 1956

It appearing, That on October 22, 1956, the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company and The Pennsylvania Railroad Company filed an application for authority to construct,

and operate connection tracks totaling approximately 1.43 miles in length, and in which application the Illinois Central Railroad Company, The Pennsylvania Railroad Company and the Chicago, South Shore and South Bend Railroad seek authority to acquire trackage rights over certain existing tracks and the aforesaid connecting tracks to be constructed, all in the vicinity of the Lake Calumet Harbor District in Cook County, Illinois;

It further appearing, That on November 19, 1956, the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company filed their petition for leave to intervene in opposition to the application alleging that the railroad properties of the latter include a line of railroad with various yard, spur and industrial tracks and their appurtenances, extending from a connection with the line of the former near 95th Street and Stoney Island Avenue, Chicago, Illinois, to points on the shore of Lake Calumet, including the Chicago Regional Port District, that the former as lessee of these properties, exclusively serves the Chicago Regional Port District; and that petitioners have expended large sums of money in construction of facilities to serve said District and propose and are prepared to expend further sums of money to keep themselves in a position to serve said District adequately;

And it further appearing, That the petitioners have shown an interest in the proceeding sufficient to warrant intervention;

It is ordered, That said Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

[fol. 422] *It is further ordered,* That a copy of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Alabama, Arkansas, Delaware, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minne-

sota, Mississippi, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia and Wisconsin.

Dated at Washington, D.C., this 29th day of November, A.D. 1956.

By the Commission, Commissioner Mitchell.

Harold D. McCoy, Secretary.

[fol. 431]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

APPLICATION OF ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, AND THE PENNSYLVANIA RAILROAD COMPANY FOR AUTHORITY TO CONSTRUCT CERTAIN LINES OF RAILROAD IN COOK COUNTY, ILLINOIS.

RETURN TO QUESTIONNAIRE—January 3, 1957

The Illinois Central Railroad Company, Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company, hereinafter referred to respectively as the Illinois Central, K&E, PB&W, and Pennsylvania, having made application to the Interstate Commerce Commission under Section 1(18) of the Interstate Commerce Act for a certificate that the present and future public convenience and necessity require and will require the construction by the Illinois Central, the K&E, and the Pennsylvania for and on behalf of the PB&W, and operation by Illinois Central, Pennsylvania, and Chicago South

Shore and South Bend Railroad, hereinafter called the [fol. 432] South Shore, of a new extension of a line of railroad from a point of connection with the K&E near 130th Street and Doty Avenue in the City of Chicago, County of Cook, State of Illinois, more clearly shown on Exhibit C, attached hereto, which application is filed in the office of the Commission in Finance Docket No. 19538, hereby affirm that notice of the application has been published in the form prescribed by the Commission at least once during each of three consecutive weeks, beginning October 30, 1956, in the Chicago Daily Tribune, a newspaper of general circulation in the County of Cook, State of Illinois, being the state and county in which the proposed extension of line would be located, and that the newspaper clipping hereto attached, marked Exhibit No. I is a true copy of the notice as published in said newspaper; and it is further affirmed that notice of the filing of the application was forwarded by first-class mail to the Governor of the State of Illinois and to the Secretary of the Illinois Commerce Commission in accordance with the rules of this Commission, and that the certificates of service hereto attached and marked Exhibit No. J contain true copies of the notice as forwarded to the Governor of the State of Illinois and the Secretary of the Illinois Commerce Commission.

[fol. 433] The applicants also submit the following information required by the Commission:

1. The essential facts to show that the applicant is a carrier by railroad, engaged in the transportation of passengers or property, subject to the interstate commerce act, or is a corporation organized to construct and operate a railroad. If not incorporated, so state, giving complete description of party or parties filing the application.

The Illinois Central was incorporated by a Special Act of the General Assembly of the State of Illinois approved February 10, 1851.

The K&E was incorporated under the laws of the State of Illinois October 8, 1904.

The PB&W was incorporated as a corporation of the States of Delaware and Maryland and the Commonwealth of Pennsylvania pursuant to an agreement of consolidation dated April 3, 1916, filed in the respective offices of the Secretary of State of the States of Delaware and Maryland and in the office of the Secretary of the Commonwealth of Pennsylvania, and recorded in the Recorder's Office for New Castle County, Delaware, on September 15, 1916.

The Pennsylvania was incorporated under an Act of the Commonwealth of Pennsylvania, affirmed April 13, 1846.

[fol. 434]

2. Whether the proposed new line of railroad would be both constructed and operated by the applicant.

The Illinois Central and the Pennsylvania each propose to operate the line of railroad which applicants herein seek authority to construct. The K&E and PB&W do not propose to operate the line of railroad which they herein seek authority to construct.

3. Whether any corporation, individual, or trustee, holds control over the applicant at the date of filing this return.

See pages 2 (paragraph b), 19 (answers 8 and 9), and 20 (answers 10 and 11) of applications.

4. Whether the applicant is connected by stock ownership, or otherwise, with any industry to be served by the line proposed to be constructed, acquired, or operated. If so, state the facts.

Applicants are not connected by stock ownership, or otherwise, with any industry to be served by the proposed new lines of railroad.

5. The chief uses and purposes of the proposed line or operation.

The uses and purposes of the proposed lines are to permit the Illinois Central, Pennsylvania, and the South Shore to serve present and future industries, elevators, ware-[fol. 435] houses, docks, and piers in the Calumet Harbor Port area near Chicago, in Cook County, Illinois. By an application concurrently filed under Section 5(2) of the Interstate Commerce Act, the latter three railroads are seeking authority to acquire trackage rights over certain existing tracks and the proposed new tracks which are the subject of the instant application.

6. The classes of service to be performed, as passenger, freight, express, and switching.

Freight and switching service will be provided over the proposed lines.

7. The kind of motive power to be used. If electric power, state source and estimated cost.

Diesel power will be used predominantly over the lines to be constructed.

8. Whether the line proposed to be constructed, acquired, or operated would receive material revenue from the territory traversed, or serve any material public convenience and necessity of the local territory.

The line proposed to be constructed and operated will receive material revenue from freight traffic to be handled to and from industries, elevators, warehouses, docks, and piers presently operating in the Calumet Harbor Port area, in addition to those facilities to be constructed with the further development of the area.
[fol. 436] Material public convenience and necessity will be served by the entry into the Calumet Harbor area of

additional strong trunk-line rail carriers affording that area direct rail links with points in the South, East, and West.

9. The name, area, and population of each county in which the new line is to be constructed, or in which the line to be acquired or operated is located, and the name and population of each city, town, and village at which a station would be or is established, together with its distance from a designated initial point, with the source of information as to population.

The proposed line will be constructed and operated wholly within the switching limits of the City of Chicago in Cook County, Illinois. Cook County has an area of 954 square miles and a population of 4,508,792, and the City of Chicago has a population of 3,620,962, based upon the 1950 Census as shown in *The World Almanac, 1956.*

10. The names and places mentioned in paragraph 9 that are now served by common carrier railroads (excluding street railways), and the name of each such carrier serving the several places.

The Lake Calumet Port District, which the proposed [fol. 437] line will serve is currently served by the Chicago, Rock Island and Pacific Railroad Company by virtue of its acquisition of the Pullman Railroad Company, through purchase of capital stock, and lease by the former of the railroad property of the latter approved and authorized by the Commission in Finance Docket No. 16252, *Pullman Railroad Company Control,* decided November 17, 1949.

11. The names of the places mentioned in paragraph 9 that have no common carrier railroad service, the distance in miles of each such place from the nearest station on a common carrier railroad, the name of each such railroad and the character of the connecting highway.

No other places are mentioned in paragraph 9.

12. The name and population of each city, town, and village (together with state and county in which located), within the area to be served but not on the proposed route.

Not applicable.

13. The approximate distance in miles by highway from the nearest station on the line to be constructed or acquired to each of the places mentioned in paragraph 12, and the names of all common carrier railroads that now serve each of the places.

Not applicable.

14. The names of common carrier railroads with which the line would connect, and the proposed points of track connection.

[fol. 438] The proposed new extension of line will connect with the K&E near 130th Street and Doty Avenue in the City of Chicago, County of Cook, State of Illinois, and will not connect with any other common carrier railroad.

15. The number of common carrier truck and bus lines operating in the area to be traversed by the line, and the character of service performed by each.

There are ninety-six (96) common carrier truck lines operating in the area to be traversed by the line. The type of service afforded varies.

16. The general character of the country which the line would serve. Indicate whether it is level, rolling, mountainous, cultivated, pasture, prairie, desert, rocky, or timbered, etc.

The general character of the country which the proposed new extension of line would serve is generally level and well suited for industrial development.

17. The approximate area of the territory to be served by the line, an estimate of the population therein and the area (1) in timber, (2) in pasture, and (3) under cultivation.

Not applicable, as the area served by the proposed new extension is to be used for the development of an inland port facility and general industrial development.

[fol. 439]

18. The kinds of industry carried on in the area to be served, such, for example, as farming, dairying, grazing, coal mining, manufacturing, lumbering, etc., and the relative importance of each.

The Lake Calumet Harbor Terminals and the Chicago Regional Port District have at present docks, piers, elevators, and warehouses and are engaged in the warehousing and transfer of freight between ships, barges, motor trucks, and railroads in the Lake Calumet Harbor area. New channels are being dug, new land is being made available by fill, additional elevators and warehouses are under construction, all increasing the great potential of the area of the Port itself.

19. The main facts as to the age, growth, and extent of such industries, their probable future growth and permanence and the reasons therefor.

The industrial development of the Lake Calumet Harbor area, although of recent origin, has been extremely rapid, and it is estimated that, if the present pace continues, complete development, including the utilization of all available land, will occur within the next ten years. In that event, the area will have become one of the foremost industrial centers in the Middle West.

20. What carriers now serve these industries, and to what extent?

[fol. 440] The only carriers serving the industries at present are the aforementioned common carrier truck lines and the Chicago Rock Island and Pacific Railroad by virtue of its purchase of the Pullman Railroad Company.

21. Whether the chief support of the line to be constructed or acquired would come from the general community or from some particular industry or industries, located or to be located. In the latter case, give facts concerning such particular industry or industries and applicant's contractual or financial relation thereto.

The chief support of the proposed line would be derived from export, import, and domestic freight, to be interchanged between railroads, ships, and barges in the Lake Calumet Harbor area, having origin or destination in territory served by applicants. Applicants have no contractual or financial relations with any industry at present located, or to be located, on the site of the proposed line.*

22. Whether the proposed line of railroad would be built, acquired, or operated primarily for a direct profit from railway operation, or for the advantage of any other industry or business. If for the latter, state what industry or business would be so benefited, what such advantages would be, and the applicant's contractual or financial relation to said industry.

[fol. 441] The proposed line of railroad will be built and operated for the direct profit of applicants.

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*Manor Real Estate Company, a subsidiary of Pennsylvania, will lease property adjacent to the Port area to Overseas Shipping, Incorporated, a warehousing company.

23. If the line is to be or is an extension of an existing railroad, or a branch, connecting track, or cutoff, the extent to which it is expected to be directly profitable in itself, and the extent to which it is expected to be justified by its effect on the business of the existing line.

See answers to questions 29 and 30.

24. If the line is to be a connecting link between existing railroads, the kind and volume of traffic, expressed in tons or carloads, that probably would be interchanged, and the economies that would be effected by such interchange.

Not applicable.

25. Of the interchange traffic mentioned in answer to paragraph 24, what part, expressed in tons or carloads, cannot be hauled or moved by existing railroads or truck lines.

Not applicable.

26. The facts concerning any agreement, tentative or otherwise, with existing carriers, covering operation, interchange of traffic, division of rates, or trackage rights, in connection with the line.

Copies of agreements, executed or to be executed by the parties, between applicants herein are attached hereto in the following order:

[fol. 442]

Exhibit H-1, Contract between Illinois Central and Pennsylvania, covering the use by the Pennsylvania of the Illinois Central's main line.

Exhibit H-2, Contract between Illinois Central and Pennsylvania, covering use by the Pennsylvania of Illinois Central's 30th Street connection.

Exhibit H-3, Contract between Illinois Central and Pennsylvania, covering Illinois Central's use of Pennsylvania property at Calumet Harbor.

Exhibit H-4, Contract between Illinois Central, K&E, South Shore, and Pennsylvania, covering Pennsylvania's use of the K&E as tenant of Illinois Central.

Exhibit H-5, Contract between Illinois Central and South Shore, covering use of Illinois Central's 130th Street connection.

Exhibit H-6, Contract between Pennsylvania and South Shore, covering South Shore's use of Pennsylvania's Calumet Harbor property.

Exhibit H-7, Contract between Illinois Central, K&E, and South Shore covering Illinois Central's use (including tenants) of the K&E.

27. Whether any aid, gift, grant of right-of-way, or other donation has been promised in connection with the proposed new line of railroad; if so, state specifically the nature, amount, and value of such promised donations.

No aid, gift, grant of right-of-way, or other donation has been promised in connection with the proposed lines.
[fol. 443]

28. The manner in which it is proposed to finance construction and equipment, or acquisition, the kind and amount of securities to be issued, and the approximate terms of their sale; to what extent funds for financing are now available, and which, if any, of such securities would be underwritten by industries to be served by the proposed line.

Construction of the lines will be financed for each applicant from its current funds.

29. An estimate, in detail, of the character and volume of traffic expected and the gross revenue to be derived therefrom, covering each of the first five years of operation, together with an estimate of the annual gross revenues expected after the first five years. The detailed estimate required for the first five years should show the amount of each class of traffic, the mean length of haul, the rate per unit, and the revenue to be derived, also chief points or territories of origin and destination.

An estimate, in detail, of the character and volume of traffic expected and the gross revenue to be derived thereupon, covering each of the first five years of operation, together with an estimate of the annual gross revenues expected after the first five years, is as follows:

	Grain Traffic		Traffic Other Than Grain	
	Cars	Revenue	Cars	Revenue
First Year				
I.C.R.R.	2,946	$ 905,931.	1,171	$ 214,228.
P.R.R.	3,298	865,663.	3,773	690,290.
Total	6,244	$1,771,594.	4,944	$ 904,518.
Fifth Year				
I.C.R.R.	5,825	$1,778,953.	2,342	$ 428,456.
P.R.R.	6,362	1,664,760.	4,943	904,517.
Total	12,187	$3,443,713.	7,285	$1,332,973.

[fol. 444]

	Total Traffic and Revenue	
	Cars	Revenue
First Year		
I.C.R.R.	4,117	$1,120,159.
P.R.R.	7,071	1,555,953.
Total	11,188	$2,676,112.

	Total Traffic and Revenue	
	Cars	Revenue
Fifth Year		
I.C.R.R.	8,167	$2,207,409.
P.R.R.	11,305	2,569,277.
Total	19,472	$4,776,686.

Mean Length of Haul—150 miles on inbound traffic—500 miles on outbound traffic.

Chief Class of Traffic—Grain.

Rate per Unit—25¢ per 100 pounds (Rate varies according to length of haul and type of commodity.)

30. The estimated gross revenue, operating expenses, net revenue, and net railway operating income, corresponding with the estimates of traffic under paragraph 29. By "net railway operating income" is meant the excess of the credits over the debits to income, as reflected by the operating revenue, operating expense, railway tax accrual, uncollectible railway revenue, equipment rent, and joint facilities rent accounts.

The estimates of the gross revenue, operating expenses, net revenue, and net railway operating income, corresponding with the estimates of traffic set forth in paragraph 29 above are as follows:

[fol. 445]

	Illinois Central		Pennsylvania	
	First Year	Fifth Year	First Year	Fifth Year
Grain	$ 905,931	$1,778,953	$ 865,663	$1,664,760
All Other	214,228	428,456	690,290	904,517
Total railway operating revenues	1,120,159	2,207,409	1,555,953	2,569,277

	Illinois Central		Pennsylvania	
	First Year	Fifth Year	First Year	Fifth Year
Railway operating expenses	724,900	1,428,503	1,147,515	1,894,842
Net revenue from railway operation	395,259	778,906	408,438	674,435
Railway tax accruals	159,409	314,136	104,093	171,885
Railway operating income	235,850	464,770	304,345	502,550
Equipment rents (debit)	32,765	64,567	71,574	118,187
Joint facility rents (debit)	2,207	4,349	1,089	1,798
Total equipment and joint facility rents	34,972	68,916	72,663	119,985
Net railway operating income	200,878	395,854	231,682	382,565

[fol. 446]

31. The part of the estimated traffic which will constitute net additional business developed or created by the construction of the proposed new line of railroad, and the part that will be diverted from existing railroads.

The estimated grain traffic covered by answers to questions 29 and 30 is not presently moving over existing rail-

roads pending completion of the elevators in the area to be served. With the exception of certain switch business and line haul business on which the Illinois Central is competitive with the Rock Island, no traffic will be diverted by applicants from existing railroads.

32. The dates on which it is expected to begin and to complete the construction of the proposed new line of railroads.

Construction will begin with the assembly of necessary materials following the receipt of a certificate from the Commission. It is estimated that construction will consume 90 working days.

33. The engineering work in full detail which has been done with respect to the proposed new line at the time of filing the return.

The engineering work which has been done includes surveys of the location of buildings, bridges, tracks, water lines, and levels to determine elevations, contour of ground, [fol. 447] and depth of water. From the data obtained from the surveys, together with existing plans and plans of the Chicago Regional Port District, the proposed general alignment and profile of the proposed line were established upon which the estimates of cost of construction are based.

34. The following details concerning the line to be constructed:

(a) *The gage and number of main line tracks.*

There will be one main track with a gage 4'-8½".

(b) *Weight of rail for main line track.*

The weight of rail for main line track will be 112 pounds, 115 pounds, and 131 pounds.

(c) *Rate of maximum grade in each direction, and whether and how compensated for curvature.*

The maximum rate of grade, both eastward (descending) and westward (ascending), is one (1) per cent. No compensation is made for curvature as the maximum grade is on a light curve.

(d) *Rate of limiting grade that will fix train loading in each direction, and whether and how compensated for curvature.*

[fol. 448] The rate of limiting grade that will fix train loading is one (1) per cent. ascending for westward movements. No compensation is made for curvature.

(e) *If helper grades are to be used, the location, length, rate, and direction of ascent for each.*

No helper grades are to be used.

(f) *The maximum rate of curve.*

The maximum rate of curve is 20 degrees.

(g) *The average amount of curvature per mile, in degrees.*

The average amount of curvature per mile is 157 degrees of central angle.

(h) *The approximate length and height of wooden trestles or other temporary construction.*

No wooden trestles or other temporary construction are proposed.

35. An estimate of total increase in charges to road and equipment account during the first five years after completion of the new line. If this displaces rental charges on equipment, so show.

No increase in charges to road and equipment account will be made during the first five years after completion

of proposed extension of line, other than the normal and necessary charges to such account, which cannot now be estimated.

[fol. 449]

36. Any additional facts or reasons to show that the public convenience and necessity require the granting of this application.

The public convenience and necessity require the granting of this application, among other reasons, to permit direct service to and from the Lake Calumet Harbor area by applicants who serve the majority of the central, eastern, southern, and western states, and to promote the development of the Port District itself and the potential industries connected therewith, and to expedite the flow of interstate, foreign, and overseas commerce to and from the Lake Calumet Harbor.

Exhibits Required

A. A copy of the engineering report of reconnaissance for the proposed line, if records of location surveys are not submitted.

See Exhibit C.

B. A copy of the specifications as to construction, if any exist.

Each of the proposed lines will be constructed by the forces of the respective applicants, and no specifications will be required as the construction will conform to the specifications of the American Railway Engineering Association.

* * * * * * *

[fol. 476]

EXHIBIT H-1 TO RETURN

THIS AGREEMENT, Made and entered into as of the 2d day of January, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," and THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of the Philadelphia, Baltimore and Washington Railroad Company, party of the second part, hereinafter called "Pennsylvania,"

WITNESSETH:

WHEREAS Pennsylvania desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company at or near Kensington, Illinois, and Central is willing to allow Pennsylvania to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS Central and Pennsylvania have entered into three other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad and Central granting Pennsylvania trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with Central's tracks at Kensington to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River,

2. Agreements between Central, Pennsylvania and the said South Shore granting the latter two companies trackage rights over tracks of Central from the junction of Central's tracks with Kensington and Eastern tracks east of Doty Avenue to the junction of Central's tracks with tracks of Pennsylvania on the west bank of the Calumet River at the north side of East 130th Street, and

3. Agreements between Pennsylvania, Central and South Shore granting the latter two companies trackage rights over tracks of Pennsylvania from the junction of Pennsylvania's tracks with Central's tracks, from the west bank of the Calumet River at the north side of East 130th Street to the junction of Pennsylvania's tracks with tracks owned by the Chicago Regional Port District west of South Stony Island Avenue.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to Pennsylvania the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Central and such other railroad or railroads as Central has admitted or may hereafter admit to the use thereof, the tracks of Central from (a) junction of such tracks with tracks of Pennsylvania at or in the vicinity of Riverdale, Illinois, or (b) junction of such tracks with tracks of The Belt Railway Company of Chicago at or near 95th Street in the City of Chicago, to the junction of such tracks with the tracks of the Kensington and Eastern Railroad Company, PROVIDED and it is so intended that the use of Central's tracks shall include so much thereof north of said junctions at Kensington and 95th Street as to enable the engines, trains, or cars of Pennsylvania to head in on or out from the tracks of the Kensington and Eastern Railroad Company or the tracks [fol. 477] of The Belt Railway Company of Chicago and, further, that the engines, trains, and cars of Pennsylvania in going to and coming from said tracks of the Kensington and Eastern Railroad Company, if Pennsylvania so elects, may enter upon tracks of Central at either of said junctions at or near Riverdale or 95th Street and leave tracks of Central at the other junction.

2. The right herein granted to Pennsylvania to use said tracks of Central shall be for the purpose of enabling Pennsylvania to deliver and receive its freight traffic mov-

ing in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District or to and from industries served by Pennsylvania in the Lake Calumet District but, under the terms of this agreement, Pennsylvania shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Central within the area of the Chicago Switching District. Pennsylvania agrees that it will, during the initial five year period of this agreement, use said tracks of Central exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District or any industry served by Pennsylvania in the Lake Calumet District. Pennsylvania's rights under the terms of this agreement will not be affected in any manner in the event Pennsylvania shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars, and trains of Pennsylvania shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times, be under the control and management of Central's duly authorized representative. Enginemen, trainmen, and other employes of Pennsylvania engaged in and while operating the engines, trains, or cars of Pennsylvania on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars, and trains. Engines, trains, and cars of Pennsylvania shall be operated over tracks of Central on schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Pennsylvania, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Pennsylvania accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Pennsylvania to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, Pennsylvania shall reimburse and indemnify Central for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and Pennsylvania, in event of any such action, upon notice thereof being given by Central, shall defend such action free of cost, charge, or expense to Central.

[fol. 478] 5. For the use of said tracks of Central, Pennsylvania shall pay to Central for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Pennsylvania in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year between said junction at or near Riverdale and tracks of the Kensington and Eastern Railroad Company	$2.00
Per car or diesel engine unit in excess of 7,000 units per year between said junction at or near Riverdale and tracks of the Kensington and Eastern Railroad Company	$1.00
Per car or diesel engine unit up to 7,000 units per year between said junction at or near 95th Street and the Kensington and Eastern Railroad	$2.00
Per car or diesel engine unit in excess of 7,000 units per year between said junction at or near 95th Street and the Kensington and Eastern Railroad	$1.00

No additional charge shall be made for use of tracks of Central beyond junctions at Kensington or 95th Street for head room for the purposes provided in Section 1. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * * *

[fol. 484]

SUPPLEMENT TO EXHIBIT H-1 TO RETURN

RET. TO Q.
F. D. 19538

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the second part, hereinafter called "Pennsylvania",

WITNESSETH:

WHEREAS, the Central and Pennsylvania entered into an agreement dated January 2, 1957, under which Pennsylvania was granted certain trackage rights over tracks of Central from the junction of such tracks with Kensington and Eastern's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of Pennsylvania on the west bank of the Calumet River north of 130th Street, all in the City of Chicago; and

WHEREAS, Central and Pennsylvania desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

"For use of said tracks of Central, Pennsylvania shall pay to Central TWENTY FIVE CENTS ($0.25) for each loaded car unit and for each diesel engine unit moved by Pennsylvania in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates [fol. 485] on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of January 2, 1957 shall remain in effect except as herein amended or changed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers the date and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. Mottier
Vice President

ATTEST:

(SEAL)

/s/ A. L. Church
Secretary

THE PENNSYLVANIA RAILROAD COMPANY

By /s/ H. H. Pevler
Vice President and
Regional Manager

ATTEST:

/s/ G. C. Johnson, Jr.
Secretary.

[fol. 486]

EXHIBIT H-2 TO RETURN

THIS AGREEMENT, Made and entered into as of the 2nd day of January, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the second part, hereinafter called "Pennsylvania",

WITNESSETH:

WHEREAS, Pennsylvania desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company east of Doty Avenue and west of the Calumet River and Central is willing to allow Pennsylvania to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Central and Pennsylvania have entered into three other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad and Central granting Pennsylvania trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with Central's tracks at Kensington to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River, all in the City of Chicago, Illinois.

2. Agreement between Central and Pennsylvania granting Pennsylvania trackage rights over tracks of Central from the junction of Central's tracks with Kensington and Eastern tracks at or near Kensington, Illinois, to (a)

junction of tracks of Central with tracks of Pennsylvania at or near Riverdale, Illinois, or (b) junction of tracks of Central with tracks of The Belt Railway Company of Chicago at or near 95th Street in the City of Chicago, and

3. Agreements between Pennsylvania, Central and South Shore granting the latter two companies trackage rights over tracks of Pennsylvania from the junction of Pennsylvania's tracks with Central's tracks, from the west bank of the Calumet River at the north side of East 130th Street to the junction of Pennsylvania's tracks with tracks owned by the Chicago Regional Port District west of South Stony Island Avenue, all in the City of Chicago,

[fol. 487] Now, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to Pennsylvania the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Central and such other railroad or railroads as Central has admitted or may hereafter admit to the use thereof, the tracks of Central from the junction of such tracks with Kensington and Eastern's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of Pennsylvania on the west bank of the Calumet River north of 130th Street, all in the City of Chicago,

2. The right herein granted to Pennsylvania to use said tracks of Central shall be for the purpose of enabling Pennsylvania to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District or to and from industries served by Pennsylvania in the Lake Calumet District but, under the terms of this agreement, Pennsylvania shall have no right to deliver or receive any freight traffic to or from

any industry which is presently or hereafter served solely by Central within the area of the Chicago Switching District. Pennsylvania agrees that it will, during the initial five year period of this agreement, use said tracks of Central exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District or any industry served by Pennsylvania in the Lake Calumet District. Pennsylvania's rights under the terms of this agreement will not be affected in any manner in the event Pennsylvania shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars and trains of Pennsylvania shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times, be under the control and management of Central's duly authorized representative. Enginemen, trainmen, and other employes of Pennsylvania engaged in and while operating the engines, trains, or cars of Pennsylvania on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars, and trains. Engines, trains, and cars of Pennsylvania shall be operated over tracks of Central on schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Pennsylvania, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

[fol. 488] 4. Pennsylvania accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders

promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Pennsylvania to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, Pennsylvania shall reimburse and indemnify Central for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and Pennsylvania, in event of any such action, upon notice thereof being given by Central, shall defend such action free of cost, charge, or expense to Central.

5. For the use of said tracks of Central, Pennsylvania shall pay to Central $0.25 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Pennsylvania in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 494]

SUPPLEMENT TO EXHIBIT H-2 TO RETURN

RET. TO Q.
F. D. 19538

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, PARTY of the first part, hereinafter called "Central", and THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of the Philadelphia, Baltimore and Washington Railroad Company, party of the second part, hereinafter called "Pennsylvania",

WITNESSETH:

WHEREAS, Central and Pennsylvania entered into an agreement dated January 2, 1957, under which Pennsylvania was granted certain trackage rights over tracks of Central from (a) junction of such tracks with Pennsylvania at or in the vicinity of Riverdale, Illinois, or (b) junction of such tracks with tracks of The Belt Railway Company of Chicago at or near 95th street in the City of Chicago, to the junction of such tracks with the tracks of the Kensington and Eastern Railroad Company; and

WHEREAS, Central and Pennsylvania desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that;

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

"For use of said tracks of Central, Pennsylvania shall pay to Central Two DOLLARS ($2.00) for each loaded car unit and for each diesel engine unit moved by Pennsylvania in either direction from (a) said junction at or near Riverdale and tracks of the Kensington and Eastern Railroad Company or (b) said junction at or near 95th Street in the City of Chicago, Illinois,

and the Kensington and Eastern Railroad. No charge shall be made for cabooses. No additional charge shall be made for use of tracks of Central beyond junctions at Kensington or 95th Street for head room for the purposes provided in Section 1. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

[fol. 495] 2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines,

3. All other terms of said agreement of January 2, 1957 shall remain in effect as herein amended or changed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers the date and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

ATTEST:

/s/ A. L. CHURCH (SEAL)
Secretary

THE PENNSYLVANIA RAILROAD COMPANY

By /s/ H. H. PEVLER
Vice President and Regional Manager

ATTEST:

/s/ G. C. JOHNSON, JR.
Secretary

[fol. 496]

EXHIBIT H-3 TO RETURN

THIS AGREEMENT, made and entered into as of the 2nd day of January 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first party, hereinafter called "Pennsylvania", and ILLINOIS CENTRAL RAILROAD COMPANY, party of the second part, hereinafter called "Central".

WITNESSETH:

WHEREAS, Central desires to use certain tracks of Pennsylvania hereinafter described to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and S. Stony Island Avenue, Chicago, Illinois, and Pennsylvania is willing to allow Central to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Pennsylvania and Central have entered into other agreements, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago South Shore and South Bend Railroad and Central granting Pennsylvania trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with Central's tracks at Kensington to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River,

2. Agreements between Central, Pennsylvania and said South Shore granting the latter two companies trackage rights over tracks of Central from the junction of Central's tracks with Kensington and Eastern tracks east of Doty Avenue to the junction of Central's tracks with tracks of Pennsylvania on the west bank of the Calumet River at the north side of E. 130th Street, and

3. Agreement between Central and Pennsylvania granting the latter trackage rights over tracks of Central from the junction of their tracks at or near Riverdale, Illinois, or from junction of Central's tracks with tracks of The Belt Railway Company of Chicago at or near 95th Street, to junction of Central's tracks with tracks of the Kensington and Eastern at Kensington.

Now, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Pennsylvania hereby grants to Central the right to use jointly for the operation of its engines, cars, and trains [fol. 497] (in freight service only) with Pennsylvania and such other railroad or railroads as Pennsylvania has admitted or may hereafter admit to the use thereof, the tracks of Pennsylvania from junction of such tracks with tracks of Central at the north line of E. 130th Street on the west bank of the Calumet River in Chicago, Illinois, to the junction of Pennsylvania's tracks with tracks owned by the Chicago Regional Port District.

2. The rights herein granted to Central to use said tracks of Pennsylvania shall be for the purpose of enabling Central to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District or to and from industries served by Central in the Lake Calumet District, which District includes land lying either north or south of the Kensington and Eastern Railroad, but, under the terms of this agreement, Central shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Pennsylvania within the area of the Chicago Switching District. Central agrees that it will, during the initial five year period of this agreement, use said tracks of Pennsylvania exclusively for handling all

of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District. The rights of Central under the terms of this agreement will not be affected in any manner in the event Central shall not use, exclusively or otherwise, the said tracks of Pennsylvania subsequent to said initial five year period.

3. Engines, cars, and trains of Central shall move over the track or tracks designated by Pennsylvania from time to time for such movements. Such tracks shall, at all times, be under the control and management of Pennsylvania's duly authorized representative. Enginemen, trainmen and other employes of Central engaged in and while operating the engines, trains, or cars of Central on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Pennsylvania applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of Central shall be operated over tracks of Pennsylvania on schedules and in accordance with orders and regulations prescribed by said representative of Pennsylvania from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Central.

4. Central accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Central to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge [fol. 498] being imposed or assessed against Pennsylvania, Central shall reimburse and indemnify Pennsylvania for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Pennsylvania on ac-

count thereof, and Central, in event of any such action, upon notice thereof being given by Pennsylvania, shall defend such action free of cost, charge, or expense to Pennsylvania.

5. For use of said tracks of Pennsylvania, Central shall pay to Pennsylvania for each car unit (excluding cabooses), loaded or empty, and for each diesel engine unit moved by Central in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year	$2.50
Per car or diesel engine unit in excess of 7,000 units per year	1.25

Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 504]

SUPPLEMENT TO EXHIBIT H-3 TO RETURN

RET. TO Q.
F. D. 19538

This AGREEMENT made and entered into as of the 10th day of October, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and ILLINOIS CENTRAL RAILROAD COMPANY, party of the second part, hereinafter called "Central".

WITNESSETH:

WHEREAS, Pennsylvania and Central entered into an agreement dated January 2, 1957, under which Central was granted certain trackage rights over tracks of Pennsylvania therein described, to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and south Stony Island Avenue, Chicago, Illinois; and

WHEREAS, Pennsylvania and Central desire to change the basis of trackage charges contained therein.

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said track of Pennsylvania, Central shall pay to Pennsylvania Two Dollars and Fifty Cents ($2.50) for each loaded car unit and for each diesel engine moved by Central in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of January 2, 1957, shall remain in effect except as herein amended or changed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly au-

[fol. 505] thorized officer the day and year first above mentioned.

THE PENNSYLVANIA RAILROAD COMPANY

By (Signed) H. H. PEVLER

Vice President and Regional Manager

H. H. Pevler

ATTEST:

/s/ G. C. JOHNSON
Assistant Secretary

G. C. Johnson (SEAL)

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

C. H. Mottier

ATTEST:

/s/ A. L. CHURCH
Secretary

A. L. Church (SEAL)

[fol. 506]

EXHIBIT H-4 TO RETURN

THIS AGREEMENT, Made and entered into as of the 2d day of January, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the second part, hereinafter called "Pennsylvania," KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington," and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore,"

WITNESSETH:

WHEREAS by agreement dated January 2, 1957, between Kensington, South Shore and Central, Central is granted operating rights for itself and its tenants over tracks and facilities of Kensington and,

WHEREAS Pennsylvania, as a tenant of Central, desires to use certain tracks of Kensington between the junctions of Kensington's tracks with those of Central at a point west of Calumet River and south of 130th Street and at or near Kensington, all in the City of Chicago, Illinois, and

WHEREAS Central and Pennsylvania have entered into other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, briefly described as follows:

1. Agreements between Central, Pennsylvania and South Shore granting the latter two companies trackage rights over tracks of Central from the junction of Central's tracks with Kensington's tracks east of Doty Avenue to the junction of Central's tracks with tracks of Pennsylvania on the west bank of the Calumet River at the north side of East 130th Street, all in the City of Chicago, and

2. Agreements between Pennsylvania, Central and South Shore granting the latter two companies trackage rights over tracks of Pennsylvania from the junction of Pennsylvania's tracks with Central's tracks, from the west bank of the Calumet River at the north side of East 130th Street to the junction of Pennsylvania's tracks with tracks owned by the Chicago Regional Port District west of South Stony Island Avenue, all in the City of Chicago, and

3. Agreement between Pennsylvania and Central granting Pennsylvania trackage rights over tracks of Central from (a) junction of such tracks with Pennsylvania at or in the vicinity of Riverdale, Illinois, or (b) junction of such tracks with tracks of The Belt Railway Company of Chicago at or near 95th Street in the City of Chicago.

[fol. 507] Now, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Kensington, Central and South Shore hereby grant to Pennsylvania the right to use jointly, as a tenant of Central, for the operation of its engines, cars, and trains (in freight service only) with Central and South Shore and such other railroad or railroads as Central and South Shore has admitted or may hereafter admit to the use thereof, the tracks of Kensington from the junction of its tracks with Central's tracks at or near Kensington, to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago.

2. The right herein granted to Pennsylvania to use said tracks of Kensington shall be for the purpose of enabling Pennsylvania to deliver and receive its freight traffic moving in road haul of switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District or to and from industries served by Pennsylvania in the Lake Calumet District, but, under the terms of this agreement, Pennsylvania shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Central or South Shore within the area of the Chicago Switching District. Pennsylvania agrees that it will, during the initial five year period of this agreement, use said tracks of Kensington exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District or any industry served by Pennsylvania in the Lake Calumet District. Pennsylvania's rights under the terms of this agreement will not be affected in any manner in the event Pennsylvania shall not use, exclusively or otherwise, the said tracks of Kensington subsequent to said initial five year period.

3. Engines, cars, and trains of Pennsylvania shall move over the track or tracks designated by South Shore from

time to time for such movements. Such tracks shall, at all times, be under the control and management of South Shore's duly authorized representative. Enginemen, trainmen and other employes of Pennsylvania engaged in and while operating the engines, trains, or cars of Pennsylvania on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of South Shore applicable to its own employes engaged in operating its engines, cars, and trains. Engines, trains, and cars of Pennsylvania shall be operated over tracks of Kensington at such time or times in accordance with orders and regulations prescribed by said representative of South Shore from time to time. Such orders and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Pennsylvania, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Pennsylvania accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the [fol. 508] part of Pennsylvania to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, South Shore or Kensington, Pennsylvania shall reimburse and indemnify Central, South Shore or Kensington for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central, South Shore or Kensington on account thereof, and Pennsylvania, in event of any such action, upon notice thereof being given by Central, South Shore or Kensington, shall defend such action free of cost, charge, or expense to Central, South Shore or Kensington.

5. For the use of said tracks of Kensington, Pennsylvania shall pay to Central $2.00 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Pennsylvania in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

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[fol. 514]

SUPPLEMENT TO EXHIBIT H-4 TO RETURN
RET. TO Q.

RET. TO Q.
F. D. 19538

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the second part, hereinafter called "Pennsylvania", KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington" and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore",

WITNESSETH:

WHEREAS, the Kensington, South Shore, Central and Pennsylvania entered into an agreement dated January 2, 1957, under which Pennsylvania was granted certain trackage rights over tracks of Kensington from the junction of its tracks with Central's tracks at or near Kensington, to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago; and

WHEREAS, Central, Pennsylvania, Kensington and South Shore desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

"For use of said tracks of Kensington, Pennsylvania shall pay to Central Two Dollars ($2.00) for each loaded car unit and for each diesel engine unit moved by Pennsylvania in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and sixth lines.

3. All other terms of said agreement of January 2, 1957 shall remain in effect except as herein amended or changed.

[fol. 515] IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quadruplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

THE PENNSYLVANIA RAILROAD COMPANY

By /s/ H. H. PEVLER
Vice President and Regional Manager

ATTEST:

/s/ G. C. JOHNSON, JR.
Assistant Secretary

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD

By /s/ JAY SAMUEL HARTT
President

ATTEST:

/s/ EDWARD H. BROSS
Secretary

KENSINGTON AND EASTERN RAILROAD COMPANY

By /s/ O. H. ZIMMERMAN
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

[fol. 516]

EXHIBIT H-5 TO RETURN

THIS AGREEMENT, Made and entered into as of the 2nd day of January, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the second part, hereinafter called "South Shore",

WITNESSETH:

WHEREAS South Shore desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company east of Doty Avenue and west of the Calumet River in the City of Chicago and Central is willing to allow South

Shore to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to South Shore the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Central and such other railroad or railroads as Central has admitted or may hereafter admit to the use thereof, the tracks of Central from the junction of such tracks with Kensington and Eastern's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of The Pennsylvania Railroad Company on the west bank of the Calumet River north of 130th Street, all in the City of Chicago.

2. The right herein granted to South Shore to use said tracks of Central shall be for the purpose of enabling South Shore to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, South Shore shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Central within the area of the Chicago Switching District. South Shore agrees that it will, during the initial five year period of this agreement, use said tracks of Central exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District. South Shore's rights under the terms of this agreement will not be affected in any manner in the event South Shore shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars, and trains of South Shore shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times,

be under the control and management of Central's duly [fol. 517] authorized representative. Enginemen, trainmen, and other employes of South Shore engaged in and while operating the engines, trains, or cars of South Shore on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars, and trains. Engines, trains, and cars of South Shore shall be operated over tracks of Central on schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of South Shore, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. South Shore accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of South Shore to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, South Shore shall reimburse and indemnify Central for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and South Shore, in event of any such action, upon notice thereof being given by Central, shall defend such action free of cost, charge, or expense to Central.

5. For the use of said tracks of Central, South Shore shall pay to Central $0.25 for each car unit, loaded or empty

(excluding cabooses), and for each diesel engine unit moved by South Shore in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

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[fol. 523]

SUPPLEMENT TO EXHIBIT H-5 TO RETURN
RET. TO Q.

RET, TO Q.
F. D. 19538

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the second part, hereinafter called "South Shore",

WITNESSETH:

WHEREAS, the Central and South Shore entered into an agreement dated January 2, 1957, under which South Shore was granted certain trackage rights over tracks of Central from the junction of such tracks with Kensington and Eastern Railroad Company's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of The Pennsylvania Railroad Company on the west bank of the Calumet River north of 130th Street, all in the City of Chicago; and

WHEREAS, Central and South Shore desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

"For use of said tracks of Central, South Shore shall pay to Central TWENTY FIVE CENTS ($0.25) for each loaded car unit and for each diesel engine unit moved by South Shore in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of January 2, 1957 shall remain in effect except as herein amended or changed.

[fol. 524] IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD

By /s/ JAY SAMUEL HARTT
President

ATTEST:

/s/ EDWARD H. BROSS
Secretary

[fol. 525]

EXHIBIT H-6 TO RETURN

THIS AGREEMENT, made and entered into as of the 2nd day of January 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the second part, hereinafter called "South Shore".

WITNESSETH:

WHEREAS, South Shore desires to use certain tracks of Pennsylvania hereinafter described to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and S. Stony Island Avenue, Chicago, Illinois, and Pennsylvania is willing to allow South Shore to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Pennsylvania and South Shore have entered into other agreements, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago South Shore and South Bend Railroad and the Illinois Central Railroad Company granting Pennsylvania trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with Central's tracks at Kensington to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River.

2. Agreements between Illinois Central Railroad Company, Pennsylvania and South Shore granting the latter two companies trackage rights over tracks of Central from the junction of Central's tracks with

Kensington and Eastern tracks east of Doty Avenue to the junction of Illinois Central Railroad's tracks with tracks of Pennsylvania on the west bank of the Calumet River at the north side of E. 130th Street, and

Now, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Pennsylvania hereby grants to South Shore the right to use jointly for the operation of its engines, cars, and [fol. 526] trains (in freight service only) with Pennsylvania and such other railroad or railroads as Pennsylvania has admitted or may hereafter admit to the use thereof, the tracks of Pennsylvania from junction of such tracks with tracks of the Illinois Central Railroad Company at the north line of E. 130th Street on the west bank of the Calumet River in Chicago, Illinois, to the junction of Pennsylvania's tracks with tracks owned by the Chicago Regional Port District.

2. The rights herein granted to South Shore to use said tracks of Pennsylvania shall be for the purpose of enabling South Shore to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District or to and from industries served by South Shore in the Lake Calumet District, but under the terms of this agreement, South Shore shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Pennsylvania witnin the area of the Chicago Switching District. South Shore agrees that it will, during the initial five year period of this agreement, use said tracks of Pennsylvania exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District. The rights of South Shore under the terms of this agreement will not be affected in any manner in the event South Shore shall not

use, exclusively or otherwise, the said tracks of Pennsylvania subsequent to said initial five year period.

3. Engines, cars, and trains of South Shore shall move over the track or tracks designated by Pennsylvania from time to time for such movements. Such tracks shall, at all times, be under the control and management of Pennsylvania's duly authorized representative. Enginemen, trainmen and other employes of South Shore engaged in and while operating the engines, trains, or cars of South Shore on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Pennsylvania applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of South Shore shall be operated over tracks of Pennsylvania on schedules and in accordance with orders and regulations prescribed by said representative of Pennsylvania from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of South Shore.

4. South Shore accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of South Shore to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost or charge being imposed or assessed against Pennsylvania, South [fol. 527] Shore shall reimburse and indemnify Pennsylvania for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Pennsylvania on account thereof, and South Shore, in event of any such action, upon notice thereof being given by Pennsylvania, shall defend such action free of cost, charge, or expense to Pennsylvania.

5. For use of said tracks of Pennsylvania, South Shore shall pay to Pennsylvania for each car unit (excluding cabooses), loaded or empty, and for each diesel engine unit moved by South Shore in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year	$2.50
Per car or diesel engine unit in excess of 7,000 units per year	$1.25

Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

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[fol. 533]

SUPPLEMENT TO EXHIBIT H-6

RET. TO Q.
F. D. 19538

This AGREEMENT made and entered into as of the 10th day of October, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the second part, hereinafter called "South Shore".

WITNESSETH:

WHEREAS, Pennsylvania and South Shore entered into an agreement dated January 2, 1957, under which South Shore was granted certain trackage rights over tracks of Pennsylvania therein described, to the junction of such tracks with tracks of the Chicago Regional Port District north-

west of E. 129th Street and South Stony Island Avenue, Chicago, Illinois; and

WHEREAS, Pennsylvania and South Shore desire to change the basis of trackage charges contained therein.

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said track of Pennsylvania, South Shore shall pay to Pennsylvania Two Dollars and Fifty Cents ($2.50) for each loaded car unit and for each diesel engine moved by South Shore in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of January 2, 1957, shall remain in effect except as herein amended or changed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly author- [fol. 534] ized officer the day and year first above mentioned.

THE PENNSYLVANIA RAILROAD COMPANY

By /s/ H. H. PEVLER (Signed) H. H. PEVLER
Vice President and Regional Manager

ATTEST:

(SEAL)

/s/ G. C. JOHNSON
Assistant Secretary

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD

By /s/ JAY SAMUEL HARTT
President
Jay Samuel Hartt

ATTEST:

(SEAL)

/s/ EDWARD H. BROSS
Secretary
Edward H. Bross

[fol. 571]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19448

MICHIGAN CENTRAL RAILROAD COMPANY, et al.,
CONSTRUCTION, ETC.

ORDER ALLOWING NICKEL PLATE TO INTERVENE
—January 16, 1957

In the Matter of Petition for Leave to Intervene in Opposition to the Application.

Present: Richard F. Mitchell, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That on August 3, 1956, an application was filed by The Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor Belt Railroad Company for authority for construction by the first-named company and for operation by the latter companies of a line of railroad to extend from a point of connection with the first-named company near 126th Street

in the City of Chicago, easterly to the Lake Calumet Harbor Port of Chicago, of the Chicago Regional Port District, 0.9 mile, in Cook County, Illinois;

It further appearing, That on January 10, 1957, The New York, Chicago and St. Louis Railroad Company filed its petition for leave to intervene in opposition to the application alleging that petitioner's railroad parallels the east side of Lake Calumet, that the lines of petitioner and of the Chicago, Rock Island and Pacific, and Pullman Railroad Companies are the nearest railroads in the Lake Calumet area, and that said area is now and will continue to be adequately and completely served, under both present and future development, by petitioner and said railroads, without the invasion of said area by the applicants as sought herein;

It further appearing, That petitioner has shown an interest in the proceeding sufficient to warrant intervention;

It is ordered, That said The New York, Chicago and St. Louis Railroad Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

It is further ordered, That a copy of this order be served upon each of the parties to this proceeding, the Governor of Illinois and the Illinois Commerce Commission.

Dated at Washington, D. C., this 16th day of January, A. D. 1957.

By the Commission, Commissioner Mitchell.

Harold D. McCoy, Secretary.

[fol. 660]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.
CONSTRUCTION, ETC.

ORDER ALLOWING MICHIGAN CENTRAL ET AL. TO INTERVENE—February 27, 1957

In the Matter of Petition for Leave to Intervene in Opposition to the Application.

Present: John Winchell, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That on October 22, 1956, the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company and The Pennsylvania Railroad Company filed an application for authority to construct and operate connecting tracks totaling approximately 1.43 miles, and in which application the Illinois Central Railroad Company, The Pennsylvania Railroad Company and the Chicago, South Shore and South Bend Railroad seek authority to acquire trackage rights over certain existing tracks and the aforesaid connecting tracts to be constructed, all in the vicinity of the Lake Calumet Harbor District in Cook County, Illinois;

It further appearing, That on February 11, 1957, The Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor Belt Railroad Company filed their petition for leave to intervene in opposition to the application alleging that they will serve and plan to serve adequately, the Chicago Regional Port District; that they propose and are prepared to expend sums of money to place themselves in a position to serve

said District adequately; that they are capable of performing adequate service in the future to meet the rail transportation needs of said District; and that the granting of this application would effect existing competitive rights in this territory and would permit applicants to inaugurate services into territory which petitioners expect to service;

And it further appearing, That the petitioners have shown an interest in the proceeding sufficient to warrant [fol. 661] intervention;

It is ordered, That The Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor Belt Railroad Company be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

It is further ordered, That a copy of this order be served upon each of the parties to this proceeding and the Governors and public regulatory commissions of the States of Alabama, Arkansas, Delaware, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia and Wisconsin.

Dated at Washington, D. C., this 27th day of February, A. D. 1957.

By the Commission, Commissioner Winchell.

Harold D. McCoy, Secretary.

[fol. 775]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

APPLICATION OF THE BELT RAILWAY COMPANY OF CHICAGO —Dated April 23, 1957 and Filed April 25, 1957

Applicant in order more adequately to perform its functions as a terminal facility in the Chicago area for its proprietary lines and other railroads reaching the Chicago area, and to furnish a means of interchange between such lines and water carriers receiving or discharging freight through the Chicago Regional Port District hereby seeks authority from the Commission to acquire trackage rights over lines of railroad in the Chicago area permitting it to operate from a point on its lines at or near 95th Street in the City of Chicago to a point on the railroad tracks of the Chicago Regional Port District on the west side of Lake Calumet Harbor, near 130th Street, in the City of Chicago.

[fol. 776]

With respect to such application, Applicant shows:

a. Identification of Applicant.

(a) (1) Applicant's name is "The Belt Railway Company of Chicago", and its business address is 47 West Polk Street, Dearborn Station, Chicago 5, Illinois.

(a) (2) Applicant is a corporation and does business under its corporate name.

(a) (3) Applicant is a carrier by railroad subject to part I of the Act.

(a) (4) Applicant's property is located entirely within the State of Illinois, and includes lines operated under trackage rights or lease.

(a) (5) Correspondence relating to this application should be addressed to:

David O. Mathews
Vice President and General Counsel
Chicago & Eastern Illinois Railroad Company
332 South Michigan Avenue,
Chicago 4, Illinois

(b) 1 (1) Applicant is a duly organized and operating corporation, incorporated under the laws of the State of Illinois on November 22, 1882, and its corporate authority was extended for fifty years from the expiration date fixed in the original Articles of Incorporation on April 14, 1932. Applicant is not authorized to operate outside the State of Illinois.

(b) 1 (2) The names and business addresses of Applicant's directors are as follows:

Arthur K. Atkinson	Railway Exchange Building, St. Louis 1, Missouri

[fol. 777]

Warren W. Brown	608 S. Dearborn Street, Chicago 5, Illinois
L. R. Capron	547 W. Jackson Blvd., Chicago 6, Illinois
M. M. Cronk	Terminal Tower Cleveland 1, Ohio

J. E. Doyle	Terminal Tower Cleveland 1, Ohio
F. A. Gaffney	131 W. La Fayette Blvd., Detroit 26, Michigan
R. R. Galligan	First Nat'l. Soo Line Bldg., Minneapolis 2, Minnesota
R. E. Johnson	La Salle Street Station 139 W. Van Buren Street Chicago 5, Illinois
H. H. Pevler	Room 680 Union Station Bldg., 516 W. Jackson Blvd., Chicago 6, Illinois
Clair M. Roddewig	332 S. Michigan Ave., Chicago 4, Illinois
R. G. Rydin	80 East Jackson Blvd., Chicago 4, Illinois
Garrett C. White	Midland Bldg., Cleveland 15, Ohio
O. H. Zimmerman	135 East Eleventh Place, Chicago 5, Illinois

(b) 1 (3) The names, titles and business addresses of Applicant's principal officers are as follows:

L. A. Evans	President and General Manager	47 W. Polk St., Chicago 5, Ill.
F. J. Wasson	Vice-President—Traffic	47 W. Polk St., Chicago 5, Ill.
F. C. Gagen	General Counsel	47 W. Polk St., Chicago 5, Ill.

[fol. 778]

I. A. Schilke	Auditor	47 W. Polk St., Chicago 5, Ill.
J. R. Ekholm	Secretary and Treasurer	47 W. Polk St., Chicago 5, Ill.

(b) 1 (4) The names and addresses of Applicant's principal stockholders and their respective holdings are as follows:

		Shares
The Atchison, Topeka and Sante Fe Railway Company	80 E. Jackson Blvd., Chicago 4, Ill.	2400
The Chesapeake and Ohio Railway Company	Terminal Tower, Cleveland 1, Ohio	4800
Chicago & Eastern Illinois Railroad Company	332 S. Michigan Ave., Chicago 4, Illinois	2400
Chicago, Burlington & Quincy Railroad Company	547 W. Jackson Blvd., Chicago 6, Illinois	2400
Chicago, Rock Island and Pacific Railroad Company	139 W. Van Buren St., Chicago 5, Illinois	2400
Erie Railroad Company	Midland Bldg., Cleveland 15, Ohio	2400
Grand Trunk Western Railroad Company	131 W. La Fayette Blvd., Detroit 26, Mich.	2400
Illinois Central Railroad Company	135 E. Eleventh Pl., Chicago 5, Ill.	2400
Monon Railroad	608 S. Dearborn St., Chicago 5, Illinois	2400
Pennsylvania Company	Suburban Station, Philadelphia 4, Pa.	2400
Wabash Railroad Company	Railway Exchange Bldg., St. Louis 1, Mo.	2400
Wisconsin Central Railroad Company	First National Soo Line Bldg., Minneapolis 2, Minn.	2400

Information above and hereafter set forth with respect to stock ownership and stockholders does not take into account director's qualifying shares.

[fol. 779] (b) 2. Not applicable.

(b) 3. Not applicable.

(b) 4. Not applicable.

(b) 5. Not applicable.

(b) 6. Disregarding operation by the Government, Applicant has been continuously engaged in operations as a common carrier by railroad since its organization November 22, 1882.

(b) 7. The entire outstanding capital stock of Applicant is owned by the several and respective railroad companies in the proportions indicated in Item (b) 1 (4). Applicant is controlled jointly by said stockholder companies which exercise such control directly through a Board of thirteen Directors consisting of one director designated by such stockholder corporations for each 2400 shares of outstanding stock of said Applicant held by said stockholders.

(b) 8. Applicant does not exercise in any degree control or ownership over any carrier corporation subject to the Interstate Commerce Act, or over the properties of any such corporation.

(b) 9. Applicant is not a part of a system or group of corporations other than as its stock ownership is indicated in Item (b) 1 (4) and the control exercised over Applicant directly by those stockholders as indicated in Item (b) 7.

(b) 10. Of the twelve railroads listed in Item (b) 1 (4) as stockholders of the Applicant five are also the owners in equal proportions of all of the capital stock of Chicago [fol. 780] and Western Indiana Railroad Company, which latter is the owner of the line of railroad operated by Applicant under a lease dated November 1, 1912, and expiring September 1, 1962. (See Finance Docket No. 7243, 150 I.C.C. 625.)

The names and addresses of the five railroad companies which own the total outstanding stock of Chicago and West-

ern Indiana Railroad Company and their respective holdings are as follows:

		Shares
Chicago & Eastern Illinois Railroad Company	332 S. Michigan Ave. Chicago 4, Illinois.	10,000
Monon Railroad	608 South Dearborn St., Chicago 5, Illinois.	10,000
Wabash Railroad Company	Railway Exchange Bldg. St. Louis 1, Missouri.	10,000
Erie Railroad Company	Midland Building Cleveland 15, Ohio.	10,000
Grand Trunk Western Railroad Company	131 W. LaFayette Blvd. Detroit 26, Michigan	10,000

Certain of the officers and directors of Applicant also are officers and directors of Chicago and Western Indiana Railroad Company, as stated in Item (b) 11 hereof. Applicant owns no securities of a carrier corporation or corporations subject to the Act.

(b) 11. The following persons are officers or directors of the Applicant's stockholder companies and are also directors of the Applicant and the Western Indiana Company as stated below. They have been authorized to hold [fol. 781] such positions in common by orders of the Commission entered in the Finance Dockets as indicated:

Name	Position with Proprietor	Position with Western Indiana	Position with the Belt Ry. Co. of Chicago	Finance Docket of I.C.C.
Clair M. Roddewig	Pres. and Dir. of Eastern Illinois	Director	Director	15932 Sub 2
Warren W. Brown	Pres. and Dir. of Monon	Director	Director	18037
Garret C. White	Vice Pres. of Erie	Director	Director	16830 and 16830 Sub 1
F. A. Gaffney	Vice Pres. and Gen. Mgr. and Dir. of Grand Trunk	Director	Director	19090
Arthur K. Atkinson	Pres. and Dir. of Wabash	Director	Director	5832— Sub 2
R. G. Rydin	Vice Pres. of A.T. & S.F. Ry.	Director	Director	14658

The following officers of Applicant are also officers of Chicago and Western Indiana Railroad Company, as stated below, and have been authorized to hold such positions in common by orders of the Commission entered in the Finance Dockets indicated below:

Name	Position with Western Indiana	Position with The Belt Ry. Co. of Chicago	Finance Docket of I.C.C.
L. A. Evans	President and Gen. Mgr.	President and Gen. Mgr.	17463 Sub 1
[fol. 782]			
F. J. Wasson	Vice President —Traffic	Vice President —Traffic	7784 Sub. 1
F. C. Gagen	General Counsel	General Counsel	16543 — Sub. 1
I. A. Schilke	Auditor	Auditor	11635 — Sub. 1
J. R. Ekholm	Secretary and Treasurer	Secretary and Treasurer	18018 — Sub. 1

(b) 12. The total outstanding capital stock of the Applicant is 31,200 shares, all being of the same class. Each share has a par value of $100, and voting rights. The total number of stockholders is 12. Voting power resides solely in the stockholders.

c. Information Respecting the Nature of the Transaction Proposed and the Terms and Conditions thereof.

(c) 1. The transaction for which authority is sought involves trackage rights over the lines of the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company and The Pennsylvania Railroad Company, some of which are to be constructed only after authorization from the Commission, so that Applicant may operate from a point on its lines near 95th Street in the City of Chicago to a connection with the tracks of the Chicago Regional Port District near 130th Street, in the City of Chicago, as shown on Exhibit 6 attached hereto.

(c) 2. Attached hereto as Exhibits 7(a), 7(b), 7(c) and 7(d) are copies of each of the agreements pursuant to which the proposed transaction is to be effected. Briefly,

[fol. 783] they provide, subject to certain adjustments when volume increases or when certain switching rates are changed, for the payment by Applicant (1) to Illinois Central Railroad Company for use of the track of the Kensington and Eastern Railroad Company $2.00 for each car unit, loaded or empty (excluding cabooses) and for each Diesel engine unit moved by Applicant in either direction, (2) to Illinois Central Railroad Company for use of its two stretches of tracks $2.25 per car unit or Diesel unit, and (3) to The Pennsylvania Railroad Company for use of its tracks $2.50 per car unit or Diesel unit.

(c) 3. Apart from interline accounts, terminal and crossing agreements, etc., and the relationship disclosed in answer to (b) 4 above, there are no financial or other relationships, direct or indirect existing between Applicant on the one hand and Illinois Central Railroad Company, Kensington and Eastern Railroad Company, and Chicago South Shore and South Bend Railroad or any of them on the other hand.

(c) 4. The route and termini of the proposed trackage rights are shown on Exhibit 6 hereto attached. Applicant as a terminal switching carrier interchanges traffic with the other parties to this transaction at various places within the Chicago area as well as with all rail carriers, either directly or indirectly, serving the Chicago area.

(c) 5. The only property involved in this application is the trackage and other appurtenant facilities of the Illinois [fol. 784] Central Railroad Company, The Pennsylvania Railroad Company and Kensington and Eastern Railroad Company between the connection of Applicant and Illinois Central near 95th Street, Chicago and the connection of The Pennsylvania with the tracks of the Chicago Regional Port District near 130th Street in the City of Chicago, as described in greater detail in the agreements attached hereto as Exhibits 7(a), 7(b), 7(c) and 7(d).

(c) 6. For value of property involved see the application and return of Questionnaire in Finance Docket No. 19538.

(c) 7. In view of the terms of the agreements attached hereto as Exhibits 7(a), 7(b), 7(c) and 7(d), it is submitted that the policy and practice of the parties thereto with respect to reserves for depreciation and similar reserves are not material, and hence this inquiry is deemed "not applicable."

(c) 8. No securities will be acquired or sold in consummating the proposed transaction.

(c) 9. Applicant has not agreed to assume obligation or liability in respect to any incumbrances upon the property involved in the proposed transaction.

(c) 10. No consolidation or merger is proposed.

d. Facts and Circumstances Relied upon to Show that the Proposed Transaction is Within the Scope of Section 5 (2) (a) of the Interstate Commerce Act, Will be Consistent with the Public Interest, and Will Otherwise be Within the Requirements of Section 5.

(d) 1 (1). Applicant operates under a lease from the [fol. 785] Chicago and Western Indiana Railroad Company, dated November 1, 1912, that part of the railroad of the Chicago and Western Indiana Railroad Company called the "Belt Division." Ready reference to the terms and provisions thereof may be had if desired, as a copy of said instrument has been filed as Exhibit "D" in Finance Docket No. 7243.

The Belt Division is intersected by most of the trunk line railroads entering the City of Chicago, and the business of Applicant is to transfer freight cars loaded and empty between these various railroads. In addition to this transfer and interchange traffic, Applicant serves many industries located adjacent to and connected with its main

tracks in the delivery to and receipt therefrom of cars loaded and empty at regular tariff rates.

In order to arrange, improve and enlarge the property and facilities of the Belt Division, on November 1, 1912, Applicant leased from the Chicago and Western Indiana Railroad Company, additional property and facilities to those in use and operation prior to that date. The line of railroad described in the lease of November 1, 1912, extends from Cragin, a point in the northwest section of Chicago, in a direct line to the South for about ten miles, at which point, immediately to the west of its main line, is located what is known as its Clearing Yard, which consists of a central unit of gravity classification yards with [fol. 786] the necessary appurtenant receiving and departure yards; the Belt main line runs thence to the east about four and one-half miles to a junction with the main line of the Chicago and Western Indiana Railroad Company (Belt Junction), and then its line becomes coincident with the railroad of the Chicago and Western Indiana Railroad Company between Belt Junction and Pullman Junction, with an extension to the east to South Chicago. This line of railroad is now operated by the Applicant.

The Lake Calumet Harbor, Port of Chicago of the Chicago Regional Port District is being developed as a complete port for the handling of interstate and foreign commerce by water on the Great Lakes, the St. Lawrence Seaway and on the high seas. It is not proper nor in the public interest to limit service at a port to the control of one carrier; indeed, this Commission has held that the public convenience and necessity would not best be served by such an arrangement. Applicant here is a terminal switching carrier serving the interests of many railroads and shippers. It is surely consistent with the public interest that such a carrier be permitted access to this Port area. Many railroads cannot reach the Port area except through the Applicant as an intermediate carrier. By permitting Applicant access to the Port area, expedited handling with a minimum of switching movement would result.

Many industries in the Chicago area which will receive or dispatch shipments through the port must rely on the Ap-
[fol. 787] plicant for at least a part of the service. Approval of this application will afford to such shippers the advantages of one line service. All of the facts demonstrate that the proposed transaction is consistent with the public interest and that denial of approval hereof would be contrary to the public interest.

(d) 1 (2). See paragraph (d) 1 (1) above.

(d) 1 (3). See paragraph (d) 1 (1) above.

(d) 1 (4). No increase in the fixed charges of Applicant or of the grantors will result from the proposed acquisition of trackage rights involved in this application.

(d) 1 (5). No employees of Applicant will be adversely affected by the proposed transaction. The proposed agreement will not bring about any decrease in the number of employees of the Applicant, will not affect the seniority rights of any of such employees, and will not in any other respect adversely affect the interest of any such employees. Since Applicant will handle only its own traffic, none of which as of, or prior to, the date of this application, moved over the other trackage involved or via the other railroads' parties to the transaction, the proposed transaction will not and cannot affect the interests of employees of the other railroads' parties to the transaction.

(d) 1 (6). No guarantee or assumption of payment of dividends or fixed charges is contemplated in the proposed transaction.

[fol. 788] (d) 2 (1). Reference in respect to this inquiry is made to the application and questionnaire filed in Finance Docket No. 19538.

(d) 2 (2). No condition as to employment is necessary. *Baltimore & Ohio Railroad Company Operation,* 261 I.C.C. 535, 545, 548; 261 I.C.C. 615.

(d) 3. Applicant is not a carrier by water.

Required Exhibits

The following exhibits are attached hereto and made a part hereof or their absence explained by appropriate comment:

Exhibit A (1). A certified copy of the Articles of Incorporation and Certificate of Extension of Corporate Duration, are on file with the Commission in Finance Docket No. 16252, and are hereby made a part hereof by reference.

Exhibit A (2). Certified copy of By-Laws of Applicant as amended to date.

Exhibit B. Authenticated copies of Applicant's annual reports to stockholders for the calendar years 1955 and 1956 are attached to the original, but not to copies of this application.

Exhibit 1. Authenticated copy of Resolution authorizing the proposed transaction, the making of this application and designating by name and for that purpose the executive officer by whom this application is signed and verified and filed on behalf of Applicant, adopted by Applicant's Board of Directors at a meeting held in Chicago, Illinois, December 11, 1956.

[fol. 789] Exhibit 2. See Exhibit 1-a above.

Exhibit 3. Not applicable.

Exhibit 4. Not applicable.

Exhibit 5. Opinion of counsel of Applicant with respect to proposed transaction.

Exhibit 6. Map showing diagrammatically the line of Applicant and that of the railroad of Illinois Central from junction between tracks of Applicant and those of Illinois Central near 95th Street, Chicago, Illinois, to junction of

tracks of Illinois Central with those of Kensington and Eastern near Kensington; the line of Kensington and Eastern from the last mentioned junction to the junction of its tracks with those of Illinois Central east of Doty Avenue and west of the Calumet River, Chicago, Illinois; tracks of Illinois Central from the last mentioned junction to the junction of those of Illinois Central with tracks of the Pennsylvania on the west bank of the Calumet River at the north side of East 130th Street; tracks of Pennsylvania from that point to the junction of its tracks with the tracks of the Chicago Regional Port District, all in Chicago, Illinois, with respect to which the trackage rights herein involved are applicable.

Exhibit 7-a. Agreement between Applicant, Illinois Central Railroad Company, Kensington and Eastern Railroad Company, and Chicago South Shore and South Bend Railroad.

Exhibit 7-b. Agreement between Applicant and Illinois Central Railroad Company granting trackage rights from [fol. 790] junction between Applicant and Illinois Central Railroad Company near 95th Street to junction of Illinois Central Railroad Company with Kensington and Eastern Railroad Company near Kensington.

Exhibit 7-c. Agreement between Applicant and Illinois Central Railroad Company granting trackage rights from junction of Illinois Central Railroad Company with Kensington and Eastern Railroad Company east of Doty Avenue to junction between Illinois Central Railroad Company with the tracks of the Pennsylvania on the west bank of the Calumet River at the north side of East 130th Street.

Exhibit 7-d. Agreement between Applicant and The Pennsylvania Railroad Company granting trackage rights from junction between The Pennsylvania Railroad Company and the Illinois Central Railroad Company to junction of The Pennsylvania Railroad Company with tracks of the Chicago Regional Port District.

Exhibit 8. General Balance Sheet of Applicant as of February 28, 1957.

Exhibit 9. Applicant's income account and profit and loss statement for the years 1952, 1953, 1954, 1955, 1956 and first two months of 1957.

Exhibit 10. See paragraph (b) 1 (9) above.

Exhibit 11. Not applicable.

Exhibit 12. Not applicable.

Exhibit 13. Not applicable.

[fol. 791] Prayer

Wherefore, Applicant prays that this Commission enter an order approving and authorizing the trackage rights set forth above, such authorization and approval to be effective from and after the date the tracks to be constructed by the Pennsylvania Railroad Company and the Illinois Central Railroad Company involved in this application have been completed.

Dated at Chicago, Illinois, this Twenty-third day of April, 1957.

The Belt Railway Company of Chicago, By Signed —L. A. Evans, President.

(Corporate Seal)

Counsel: Hewitt Biaett, R. H. Bierma, E. E. Boyner, R. T. Cubbage, Eugene S. Davis, Franklin C. Gagen, John B. Goodrich, David O. Mathews, William J. O'Brien, Jr., R. S. Outlaw, H. V. Spike, Floyd J. Stuppi, Frank F. Vesper.

[fol. 792] *Duly sworn to by L. A. Evans, jurat omitted in printing.*

[fol. 792a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-A TO APPLICATION

Finance Docket No. 19742

THIS AGREEMENT, Made and entered into as of the 21st day of January, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," THE BELT RAILWAY COMPANY OF CHICAGO, party of the second part, hereinafter called "Belt," KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington," and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore,"

WITNESSETH:

WHEREAS by agreement dated January 2, 1957, between Kensington, South Shore and Central, Central is granted operating rights for itself and its tenants over tracks and facilities of Kensington and,

WHEREAS Belt, as a tenant of Central, desires to use certain tracks of Kensington between the junctions of Kensington's tracks with those of Central at a point west of Calumet River and south of 130th Street and at or near Kensington, all in the City of Chicago, Illinois, and

WHEREAS Central and Belt have entered into other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement between Central and Belt granting trackage rights over tracks of Central from the junction of Central's tracks with Kensington's tracks east of Doty Avenue to the junction of Central's tracks with tracks of The Pennsylvania Railroad Company on the west bank of the

Calumet River at the north side of East 130th Street, all in the City of Chicago, and

2. Agreement between Belt and Central granting Belt trackage rights over tracks of Central from the junction of Central's tracks with Kensington's tracks at or near Kensington to junction of such tracks with tracks of Belt at or near 95th Street all in the City of Chicago.

Now, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Kensington, Central and South Shore hereby grant to Belt the right to use jointly, as a tenant of Central, for the operation of its engines, cars, and trains (in freight service only) with Central and South Shore and such other railroads as Central and South Shore has admitted or may hereafter admit to the use thereof, the tracks of Kensington from the junction of its tracks with Central's tracks at [fol. 792b] or near Kensington, to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago.

2. The right herein granted to Belt to use said tracks of Kensington shall be for the purpose of enabling Belt to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Belt shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Central. Belt agrees that it will, during the initial five year period of this agreement, use said tracks of Kensington for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressly agreed by and between the parties hereto that Belt must observe instructions of shippers and connecting railroads as to the routing

of cars to and from the Chicago Regional Port District but that where Belt is not under specific routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Belt to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Belt is preserved. Belt's rights under the terms of this agreement will not be affected in any manner in the event Belt shall not use, exclusively or otherwise, the said tracks of Kensington subsequent to said initial five year period.

3. Engines, cars, and trains of Belt shall move over the track or tracks designated by South Shore from time to time for such movements. Such tracks shall, at all times, be under the control and management of South Shore's duly authorized representative. Enginemen, trainmen and other employes of Belt engaged in and while operating the engines, trains, or cars of Belt on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of South Shore applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of Belt shall be operated over tracks of Kensington at such time or times in accordance with orders and regulations prescribed by said representative of South Shore from time to time. Such orders and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Belt, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Belt accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which

may hereafter become effective. In event of any failure on the part of Belt to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, South Shore or Kensington, Belt shall reimburse and indemnify Central, South Shore or Kensington for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central, South Shore or Kensington on account thereof, and Belt in event of any such action, upon notice thereof being given by Central, South Shore or Kensington, shall defend such action free of cost, charge, or expense to Central, South Shore or Kensington.

[fol. 792c] 5. For the use of said tracks of Kensington, Belt shall pay to Central $2.00 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Belt in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * * *

[fol. 792d]

BEFORE THE INTERSTATE COMMERCE COMMISSION
EXHIBIT 7-B TO APPLICATION

Finance Docket No. 19742

THIS AGREEMENT, Made and entered into as of the 21st day of January, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," and THE BELT RAILWAY COMPANY OF CHICAGO, party of the second part, hereinafter called "Belt,"

WITNESSETH:

WHEREAS Belt desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company at or near Kensington, Illinois and Central is willing to allow Belt to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS Central and Belt have entered into two other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago South Shore and South Bend Railroad and Central granting Belt trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with Central's tracks at Kensington to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River, and

2. Agreement with Central granting Belt trackage rights over tracks of Central from the junction of Central's tracks with Kensington and Eastern tracks east of Doty Avenue to the junction of Central's tracks with tracks of The Pennsylvania Railroad Company on the west bank of the Calumet River at the north side of East 130th Street.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to Belt the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Central and such other railroad or railroads as Central has admitted or may hereafter admit to the use thereof, the tracks of Central from junction of such tracks with tracks of Belt at or near 95th Street in the City of Chicago, to the junction of such tracks with the tracks of the Kensington and Eastern Railroad Company, PROVIDED

and it is so intended that the use of Central's tracks shall include so much thereof north of said junctions at Kensington and 95th Street as to enable the engines, trains, or cars of Belt to head in on or out from the tracks of the Kensington and Eastern Railroad Company or the tracks of Belt.

[fol. 792e] 2. The right herein granted to Belt to use said tracks of Central shall be for the purpose of enabling Belt to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Belt shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Central. Belt agrees that it will, during the initial five year period of this agreement, use said tracks of Central for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressly agreed by and between the parties hereto that Belt must observe instructions of shippers and connecting railroads as to the routing of cars to and from the Chicago Regional Port District but that where Belt is not under specific routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Belt to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Belt is preserved. Belt's rights under the terms of this agreement will not be affected in any manner in the event Belt shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars, and trains of Belt shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times, be under

the control and management of Central's duly authorized representative. Enginemen, trainmen, and other employes of Belt engaged in and while operating the engines, trains, or cars of Belt on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars, and trains. Engines, trains, and cars of Belt shall be operated over tracks of Central on schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Belt, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Belt accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Belt to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, Belt shall reimburse and indemnify Central for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and Belt, in event of any such action, upon notice thereof being given by Central, shall defend such action free of cost, charge, or expense to Central.

[fol. 792f] 5. For the use of said tracks of Central, Belt shall pay to Central for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit

moved by Belt in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year between said junction at or near 95th Street and the Kensington and Eastern Railroad.....$2.00

Per car or diesel engine unit in excess of 7,000 units per year between said junction at or near 95th Street and the Kensington and Eastern Railroad.....$1.00

No additional charge shall be made for use of tracks of Central beyond junctions at Kensington or 95th Street for head room for the purposes provided in Section 1. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 792g]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-C TO APPLICATION

Finance Docket No. 19742

THIS AGREEMENT, Made and entered into as of the 21st day of January, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and the BELT RAILWAY COMPANY OF CHICAGO, party of the second part, hereinafter called "Belt",

WITNESSETH:

WHEREAS, Belt desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company east of Doty Avenue and west of the Calumet River and Central is willing to allow Belt to use said tracks for the

purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Central and Belt have entered into two other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad and Central granting Belt trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with Central's tracks at Kensington to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River, all in the City of Chicago, Illinois, and

2. Agreement between Central and Belt granting Belt trackage rights over tracks of Central from the junction of Central's tracks with Kensington and Eastern tracks at or near Kensington, Illinois, to junction of tracks of Central with tracks of Belt at or near 95th Street in the City of Chicago.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to Belt the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Central and such other railroad or rail- [fol. 792h] roads as Central has admitted or may hereafter admit to the use thereof, the tracks of Central from the junction of such tracks with Kensington and Eastern's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of Pennsylvania on the west bank of the Calumet River north of 130th Street, all in the City of Chicago.

2. The right herein granted to Belt to use said tracks of Central shall be for the purpose of enabling Belt to deliver

and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Belt shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Central. Belt agrees that it will, during the initial five year period of this agreement, use said tracks of Central for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressly agreed by and between the parties hereto that Belt must observe instructions of shippers and connecting railroads as to the routing of cars to and from the Chicago Regional Port District but that where Belt is not under specific routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Belt to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Belt is preserved. Belt's rights under the terms of this agreement will not be affected in any manner in the event Belt shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars and trains of Belt shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times, be under the control and management of Central's duly authorized representative. Enginemen, trainmen, and other employes of Belt engaged in and while operating the engines, trains, or cars of Belt on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of Belt shall be operated over tracks of Central on

schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Belt, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

[fol. 792i] 4. Belt accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Belt to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, Belt shall reimburse and indemnify Central for or on account of such fine, penalty, cost or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and Belt, in event of any such action, upon notice thereof being given by Central, shall defend such action free of cost, charge, or expense to Central.

5. For the use of said tracks of Central, Belt shall pay to Central $0.25 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Belt in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 792j]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-D TO APPLICATION

Finance Docket No. 19742

THIS AGREEMENT, made and entered into as of the 21st day of January, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and THE BELT RAILWAY COMPANY OF CHICAGO, party of the second part, hereinafter called "Belt",

WITNESSETH:

WHEREAS, Belt desires to use certain tracks of Pennsylvania hereinafter described, to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and S. Stony Island Avenue, Chicago, Illinois, and Pennsylvania is willing to allow Belt to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Belt has entered into other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, under which Belt has secured trackage rights over tracks owned by other railroads from a point at or near E. 95th Street to a connection with Pennsylvania tracks as covered by this agreement, all in the City of Chicago, Illinois.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Pennsylvania hereby grants to Belt the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Pennsylvania and such other railroad or railroads as Pennsylvania has admitted or may

hereafter admit to the use thereof, the tracks of Pennsylvania from the junction of such tracks with tracks of the Illinois Central Railroad Company at the north line of E. 130th Street on the west bank of the Calumet River in Chicago, Illinois, to the junction of Pennsylvania's tracks with the tracks owned by the Chicago Regional Port District, all in the City of Chicago.

2. The right herein granted to Belt to use said tracks of Pennsylvania shall be for the purpose of enabling Belt to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Belt shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Pennsylvania. Belt agrees that it will, during the initial five year period of this agreement, use said tracks of Pennsylvania for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressely agreed by and between the parties hereto that Belt must observe instructions of shippers and connecting railroads [fol. 792k] as to the routing of cars to and from the Chicago Regional Port District but that where Belt is not under specific routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Belt to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Belt is preserved. Belt's rights under the terms of this agreement will not be affected in any manner in the event Belt shall not use, exclusively or otherwise, the said tracks of Pennsylvania subsequent to said initial five year period.

3. Engines, cars and trains of Belt shall move over the track or tracks designated by Pennsylvania from time to

time for such movements. Such tracks shall, at all times, be under the control and management of Pennsylvania's duly authorized representative. Enginemen, trainmen, and other employes of Belt engaged in and while operating the engines, trains, or cars of Belt on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Pennsylvania applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of Belt shall be operated over tracks of Pennsylvania on schedules and in accordance with orders and regulations prescribed by said representative of Pennsylvania from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Belt.

4. Belt accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Belt to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Pennsylvania, Belt shall reimburse and indemnify Pennsylvania for or on account of such fine, penalty, cost or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Pennsylvania account thereof, and Belt, in event of any such action, upon notice thereof being given by Pennsylvania, shall defend such action free of cost, charge, or expense to Pennsylvania.

5. For the use of said tracks of Pennsylvania, Belt shall pay to Pennsylvania for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Belt in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year $2.50

Per car or diesel engine unit in excess of 7,000 units per year $1.25

Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 794]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY FOR LEAVE TO INTERVENE—May 3, 1957

Come now your petitioners, Chicago, Rock Island and Pacific Railroad Company (hereinafter sometimes referred to as "Rock Island") and Pullman Railroad Company (hereinafter sometimes referred to as "Pullman"), and respectfully represent that they have an interest in the matters involved in the above-entitled proceeding and desire to intervene in and become parties to said proceeding, and for grounds of the proposed intervention say:

I.

Petitioner, Chicago, Rock Island and Pacific Railroad Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, is admitted to do business under the laws of the State of Il-
[fol. 795] linois and is a common carrier by railroad engaged in the interstate transportation of freight and passengers in and through the State of Illinois and many other states.

Petitioner, Pullman Railroad Company, is a railroad corporation organized and existing under and by virtue of the laws of the State of Illinois. All the capital stock of Pullman was acquired by Rock Island under authority granted by the Commission on November 17, 1949 in *F. D. No. 16252, Pullman Railroad Company Control, etc.,* at which time the Commission also approved Rock Island's operation of the Pullman properties under lease the term of which has been extended to 1965 by authority of the Commission granted on January 20, 1955. The railroad properties of the Pullman, including operating rights, consist, among others, of a line of railroad extending from a connection with the line of the Rock Island at or near the intersection of 95th Street and Stony Island Avenue, Chicago, Illinois, to points on the shore of Lake Calumet, including the Chicago Regional Port District, a distance of between four and five miles, together with various yard, side, spur and industrial tracks and their appurtenances. These properties and rights of Pullman, by virtue of the above referred to agreement, have been integrated into Rock Island's system operations.

[fol. 796] II.

By application filed in this proceeding under Section 5(2) of the Interstate Commerce Act, applicant seeks to acquire trackage rights for the purpose of extending its line of railroad and operations to serve the Chicago Regional Port District which is located adjacent to petitioners' railroad

tracks and is being served by them exclusively. The sole underlying purpose of applicant in extending its line of railroad and operations through trackage rights to serve the Chicago Regional Port District is to divert to its line traffic handled by petitioners.

III.

Petitioners oppose the applications filed under Section 5(2) of the Act on the grounds, among others, that they are serving and will continue to serve, adequately the Chicago Regional Port District; that they have expended large sums of money in the construction of facilities to serve said Chicago Regional Port District adequately; that they propose and are prepared to expend further sums of money to keep themselves in a position to serve said Chicago Regional Port District adequately; that they are capable of performing adequate service in the future to meet the rail [fol. 797] transportation needs of the Chicago Regional Port District; that they are entitled to retain the rail traffic of the Chicago Regional Port District; that there is no reason sufficient in law for applicant's extension of its line of railroad and operations through trackage rights to serve territory heretofore served exclusively and adequately by petitioners; and that applicants extension of its line of railroad and operations through trackage rights to serve territory heretofore served exclusively and adequately by petitioners cannot be supported by public convenience and necessity, could mean only a duplication of rail service, and would create unsound and uneconomic conditions in transportation.

WHEREFORE, Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company pray leave to intervene and be treated as parties hereto with the right to have notice and appear at the taking of testimony, produce and cross-examine witnesses and be heard by counsel upon brief and oral argument, if oral argument is granted.

Dated at Chicago, Illinois this 3rd day of May, 1957.

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois.

[fol. 798] Joseph B. Fleming, John Bordes, Prudential Plaza, 130 E. Randolph Drive, Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 East Randolph Drive, Chicago 1, Illinois, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 800]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

OPPOSITION TO PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY FOR LEAVE TO INTERVENE—May 7, 1957

Comes now The Belt Railway Company of Chicago and opposes the proposed intervention in this proceeding by Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company for the reason that the pro-

posed intervenors have failed to state, and lack, the necessary legal right, the protection of which would justify their proposed intervention in this proceeding.

[fol. 801] Brief of the Belt Railway Company of Chicago in Support of Its Opposition to Intervention by Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company.

The Belt Railway Company of Chicago by and through its application to the Commission, seeks to secure approval by the Commission of trackage rights to place the Belt in a position to lawfully handle export and import traffic, the movement of which through the Lake Calumet Harbor Port area is anticipated in the future. The Belt does not seek through approval of its trackage agreements, to encroach upon any traffic now originating or terminating at industries served by the Rock Island or Pullman Railroad Company and it does not seek to encroach upon any export or import business now being handled lawfully by the Rock Island or Pullman.

The asserted right of the Rock Island and Pullman to intervene in this proceeding rests upon Rock Island's acquisition of Pullman Railroad Company in Finance Docket No. 16252, *Pullman Railroad Company Control, Etc.*, dated November 17, 1949. But neither the Rock Island nor Pullman acquired and this Commission did not undertake to confer, in that proceeding, upon either of them, authority to handle export or import business through the Lake Calumet Harbor Port area and to the best of our knowledge, neither the Rock Island nor Pullman has made any application to this Commission for authority to do so.

[fol. 802] The report in Finance Docket No. 16252 discloses that Pullman Railroad Company at the time of its acquisition by the Rock Island was conducting essentially a spur or industry track service. As the Commission stated: "Primarily Pullman is a switching carrier with tariffs on file publishing rates on interplant and Chicago

district switching service. It is also party to trunk-line tariffs in which the Pullman charges are absorbed out of the through rates on all line-haul traffic. Local rates between points on Pullman are covered by a published tariff and are in the nature of industrial switching charges." It should be noted that Pullman Railroad at the time of its acquisition by the Rock Island, did not publish any rates on export and import traffic.

This Commission on Sheets 6 and 7 of its report discussed Pullman traffic and how it was handled prior to and at the time of Pullman's acquisition by the Rock Island. It should be noted also that the report omits any reference to export and import traffic handled by Pullman. The fact is that Pullman did not handle any export or import traffic simply because there was no such traffic handled through the Lake Calumet Harbor Port area at that time.

The Commission on Sheets 8 and 9 of its report, discussed the Lake Calumet District and discussed the possibility of industrial development in the territory then served by Pullman, and in that connection stated: "Contemplated industries to be established in the area include [fol. 803] facilities for the transfer of coal from railroad cars to lake steamers, a large grain elevator, and a rail-water-truck terminal. The possibilities of industrial development in the area involved are tremendous and Pullman, as presently located, is in a strategic position with respect to the rail service *that may be needed therein.*" (Italics added.) But we submit that there is nothing in that language which excused the Rock Island and Pullman from seeking authority from this Commission to convert what then was and theretofore had been, essentially a spur or industry track service, into through rail-water and water-rail movements between interstate points.

This Commission specifically discussed the only industry then located at the southern extremity of Lake Calumet, which is the focal point of this controversy and to which Pullman has constructed tracks since 1949. In 1949, a

United States Navy warehouse was located near 130th Street, the focal point, and in referring to rail service to this warehouse, the Commission stated: "The rail transportation was in the nature of an interplant movement involving a distance of approximately 1.5 miles and requiring great clearances. After the termination of hostilities, portions of the warehouse were leased for storage purposes, and since that time it has been turned over to the War Assets Administration for disposal. Rail service to the warehouse continues to be furnished by Pullman occasionally."

[fol. 804] Summarizing, the Commission's report makes it very clear that the Rock Island through acquisition of Pullman, did not secure authority to handle export and import business via the Lake Calumet Harbor Port area by rail-water and water-rail movements. Yet, Congress has made it very clear that the handling of such business is a matter of great importance, by expressly providing in Section 6(11) of the Interstate Commerce Act that when property may be or is transported from point to point in the United States by rail and water the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, this Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, particularly with regard to the establishment of physical connections between the lines of the rail carriers and the dock at which interchange is to be made with water carriers. Section 6(11) expressly provides that this Commission shall have full authority to determine and prescribe the terms and conditions upon which connecting tracks shall be operated and that the construction of such tracks shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under Section 1(18) of the Act. Both the Rock Island and Pullman have failed to comply with Sections 6(11) and 1(18) of the Act.

[fol. 805] Both the Rock Island and Pullman assert "that they are serving and will continue to serve, adequately the Chicago Regional Port District; that they have expended large sums of money in the construction of facilities to serve said Chicago Regional Port District adequately". From this it is clear that the Rock Island and Pullman have constructed tracks and facilities which to the extent that they are or are to be, utilized in the handling of export and import traffic, were constructed without requisite authority from this Commission and that all operations in the handling of such traffic likewise are and for the future will be, conducted without the authority from this Commission required by law.

It is elementary that a rail carrier must possess a legal right which the law will protect before it can complain or object to action proposed by another rail carrier. We submit that the Rock Island and Pullman not only have failed to assert a legal right, the protection of which it is entitled to in the circumstances, but that they do not possess a legal right sufficient to justify their intervention in this proceeding. Further, the Rock Island and Pullman construction of tracks and facilities and their operations in the handling of export and import traffic are and for the future will be, clearly unlawful, and it is equally elementary that the law does not regard unlawful conduct as an adequate basis for maintaining or intervening in legal proceedings. See *Western Pacific R. Co.* v. *Southern Pacific Co.*, 284 U. S. 47, 52 [fol. 806] S.C. 56, 57.

This Commission has indicated heretofore the importance it attaches to the necessity for making proper application to the Commission whenever a rail carrier undertakes to convert spur track operations into interstate operations. In *Chicago, B. & Q. R. Co. Operation*, 282 I. C. C. 249, 253, the Commission stated:

> Even if the line at the time of its construction was admitted to be a spur located wholly within one State and consequently within the exemption of 1 (22) of the

act, since 1949 it has been used as an intermediate portion of a route for the movement of coal from one State to another. Our jurisdiction under section 1(18) of the act is based not on the nature of the track involved, but on the nature of the operation by a carrier subject to our jurisdiction. Neither of the cases cited by the applicant in support of its contention that the operation is within the exemption of section 1(22) of the act, namely, *United States* v. *Idaho,* 298 U. S. 105, and *Pennsylvania R. Co.* v. *Ohio Public Utilities Comm.,* 298 U. S. 170, is controlling in this case. The former involved the abandonment of a line which was held to be a spur. The situation before us here relates, as previously indicated, to a line used as an intermediate part of a through route, even though no through rates are published. The second case cited involved the movement of raw coal by a coal company over its own tracks and not by a common carrier subject to our jurisdiction. Accordingly, we are of the opinion that the operation is within our jurisdiction and the renewed motion is overruled.

Not only was it necessary for the Burlington to seek and secure authority to conduct interstate operations, but the Commission regarded the matter so seriously that it brought about the indictment of the Burlington for con- [fol. 807] ducting unauthorized interstate operations. See the Annual Report of the Commission, dated November 1, 1952, at page 89. We submit that there is no substantial distinction between what the Rock Island and the Pullman have been doing here and what the Burlington was doing in 282 I. C. C. 249.

Accordingly, it is submitted that the Rock Island and Pullman have no legal interest sufficient to justify their intervention in this proceeding and that their present operations are unlawful in so far as they involve the han-

dling of export and import traffic, and for that reason their petition to intervene in this proceeding should be denied.

Respectfully submitted,

By David O. Mathews

Of Counsel: Hewitt Biaett, R. H. Bierma, E. E. Boyner, R. T. Cubbage, Eugene S. Davis, John B. Goodrich, William J. O'Brien, Jr., R. S. Outlaw, H. V. Spike, Floyd J. Stuppi, Frank F. Vsper.

[fol. 808] Certificate of Service (omitted in printing).

[fol. 815]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

OPPOSITION TO PETITION OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY FOR LEAVE TO INTERVENE—May 10, 1957

Comes now The Belt Railway Company of Chicago and opposes the proposed intervention in this proceeding by The New York, Chicago and St. Louis Railroad Company for the reason that the proposed intervenor has failed to state, and lacks, the necessary legal right, the protection of which would justify its proposed intervention in this proceeding.

[fol. 816] Brief of The Belt Railway Company of Chicago in Support of Its Opposition to Intervention by The New York, Chicago and St. Louis Railroad Company.

The Belt Railway Company of Chicago by and through its application to the Commission, seeks to secure approval by the Commission of trackage rights to place the Belt in a position to lawfully handle rail-water and water-rail traffic, both interstate and foreign, the movement of which through the Lake Calumet Harbor Port area is anticipated in the future. The Belt does not seek through approval of its trackage agreements, to encroach upon any traffic now originating or terminating at industries served by The New York, Chicago and St. Louis Railroad Company.

The New York, Chicago and St. Louis Railroad Company is not now handling any rail-water or water-rail traffic through the Lake Calumet Harbor Port area and to the best of our knowledge, it has not made any application to this Commission for authority to do so.

Likewise, The New York, Chicago and St. Louis Railroad Company has not filed with this Commission any tariffs covering the movement of rail-water or water-rail traffic through the Lake Calumet Harbor Port area.

Further, The New York, Chicago and St. Louis Railroad Company has no tracks connecting its line of railroad with the docks and terminals situated in the Lake Calumet [fol. 817] Harbor Port area with which it could handle rail-water or water-rail traffic through the area.

We submit that before The New York, Chicago and St. Louis Railroad Company lawfully can handle interstate rail-water or water-rail traffic through the Lake Calumet Harbor Port area, it must comply with Section 6(11) and Section 1(18) of the Interstate Commerce Act, and affirmatively establish to the satisfaction of this Commission that public convenience and necessity require that The New York, Chicago and St. Louis Railroad Company be authorized to handle rail-water and water-rail traffic through the Lake Calumet Harbor Port area; and that then, and

only then, would it have the necessary legal right and interest to justify its intervention in this proceeding.

We further submit that geographical proximity of The New York, Chicago and St. Louis Railroad Company to Lake Calumet on both the east and northeast sides thereof does not constitute a legal right or legal interest sufficient to justify its intervention in this proceeding.

Further, we submit that it is not a statement of a legal right or legal interest for The New York, Chicago and St. Louis Railroad Company to assert preemptive rights to the Lake Calumet area and to allege that the area now is and will continue to be adequately and completely served under both present and future development, by it and Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company. The Belt is not proposing [fol. 818] to tap any existing traffic of The New York, Chicago and St. Louis Railroad Company and as we have shown, it does not now handle and does not have the necessary trackage, facilities or connections with the docks to handle rail-water or water-rail traffic through the Lake Calumet Harbor Port area.

It is elementary that a rail carrier must possess a legal right which the law will protect before it can complain or object to action proposed by another carrier. We submit that The New York, Chicago and St. Louis Railroad Company not only has failed to assert a legal right, the protection of which it is entitled to in the circumstances, but that it does not possess a legal right sufficient to justify its intervention in this proceeding. See *Western Pacific R. Co. v. Southern Pacific Co.*, 284 U. S. 47, 52 S. C. 56, 57.

Accordingly, it is submitted that The New York, Chicago and St. Louis Railroad Company has no legal right or interest sufficient to justify its intervention in this proceeding and for that reason its petition to intervene in this proceeding should be denied.

Respectfully submitted,

By David O. Mathews.

Of Counsel: Hewitt Biaett, R. H. Bierma, E. E. Boyner, R. T. Cubbage, Eugene S. Davis, John B. Goodrich, William J. O'Brien, Jr., R. S. Outlaw, F. B. Henderson, Floyd J. Stuppi, Frank F. Vesper.

[fol. 819] Certificate of Service (omitted in printing).

[fol. 826]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

REQUEST OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY FOR LEAVE TO FILE ANSWER TO OPPOSITION AND BRIEF OF THE BELT RAILWAY COMPANY OF CHICAGO TO PETITION TO INTERVENE—May 16, 1957

Now come the Chicago, Rock Island and Pacific Railroad Company (hereinafter referred to as "Rock Island") and Pullman Railroad Company (hereinafter referred to as "Pullman"), and respectfully request leave to file the attached answer to the opposition and brief of The Belt Railway Company of Chicago (hereinafter referred to as "Belt") to the petition to intervene of Rock Island and Pullman in the above styled proceeding, and for grounds therefor state:

I.

While pleaded in the nature of a reply to the petition to intervene filed by Rock Island and Pullman in this proceeding, Belt's opposition and brief set forth no grounds suffi- [fol. 827] cient to deny the petition to intervene, but raise issues of fact and law which exceed the limits of matters generally raised in pleadings of this type.

II.

In its reply, Belt stated that it opposed the proposed intervention by Rock Island and Pullman "for the reason that the proposed intervenors have failed to state, and lack, the necessary legal right, the protection of which would justify their proposed intervention in this proceeding." In support of the reply, Belt submitted a brief which charges that Rock Island through acquisition of Pullman, did not obtain "authority to handle export and import business through the Lake Calumet Harbor Port area" (p. 2); that "Rock Island and Pullman have constructed tracks and facilities which to the extent that they are or are to be, utilized in the handling of export and import traffic, were constructed without requisite authority from this Commission and that all operations in the handling of such traffic likewise are and for the future will be, conducted without the authority from this Commission required by law" (p. 6); and that "Rock Island and Pullman construction of tracks and facilities and their operations in the handling of export and import traffic are and for the future will be, [fol. 828] clearly unlawful" (p. 6). Upon the basis of these charges, Belt concluded that "Rock Island and Pullman have no legal interest sufficient to justify their intervention in this proceeding and that their present operations are unlawful insofar as they involve the handling of export and import traffic, and for that reason their petition to intervene in this proceeding should be denied" (p. 8).

The charges made in Belt's pleading against Rock Island and Pullman are based upon a misconception of the facts

and law, and if left unanswered will becloud the issues involved in this proceeding.

Respectfully submitted,

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois, Joseph B. Fleming, John Bordes, Prudential Plaza, 130 E. Randolph Drive, Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 East Randolph Drive, Chicago 1, Illinois, Of Counsel.

[fol. 829] Certificate of Service (omitted in printing).

[fol. 830]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

ANSWER OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY TO OPPOSITION AND BRIEF OF THE BELT RAILWAY COMPANY OF CHICAGO TO PETITION TO INTERVENE—May 16, 1957

Now come the Chicago, Rock Island and Pacific Railroad Company (hereinafter referred as "Rock Island") and

Pullman Railroad Company (hereinafter referred as "Pullman") and state that the opposition of The Belt Railway Company of Chicago (hereinafter referred to as "Belt") to the petition to intervene filed by Rock Island and Pullman in the above entitled proceeding is unfounded for the following reasons:

I.

The petition of Rock Island and Pullman for leave to intervene met the requirements of Section 1.72 of the General Rules of Practice by setting forth the grounds of the [fol. 831] proposed intervention and the position and interest of petitioners in the proceeding. The petition was seasonably filed and did not seek to broaden the issues involved in the proceeding. The petition stated clearly that Rock Island and Pullman opposed Belt's application filed under Section 5(2) of the Interstate Commerce Act on the grounds, among others, that they are serving and will continue to serve, adequately the Chicago Regional Port District; that they have expended large sums of money in the construction of facilities to serve said Chicago Regional Port District adequately; that they propose and are prepared to expend further sums of money to keep themselves in a position to serve said Chicago Regional Port District adequately; that they are capable of performing adequate service in the future to meet the rail transportation needs of the Chicago Regional Port District; that they are entitled to retain the rail traffic of the Chicago Regional Port District; that there is no reason sufficient in law for applicant's extension of its line of railroad and operations through trackage rights to serve territory heretofore served exclusively and adequately by petitioners; and that applicants extension of its line of railroad and operations through trackage rights to serve territory heretofore served exclusively and adequately by petitioners cannot be [fol. 832] supported by public convenience and necessity, could mean only a duplication of rail service, and would

create unsound and uneconomic conditions in transportation.

II.

By notice dated May 9, 1957 the Commission assigned *F. D. No. 19742* for joint hearing in conjunction with *F. D. No. 19448, Michigan Central Railroad Company, et al., Construction, etc.*, and *F. D. No. 19538, Illinois Central Railroad Company, et al., Construction, etc.*, on June 3, 1957. By order dated September 25, 1956 in *F. D. No. 19448* and order dated November 29, 1956 in *F. D. No. 19538*, the Commission permitted Rock Island and Pullman to intervene and be treated as parties in both proceedings upon a showing that they had an interest in the proceedings sufficient to warrant intervention. The issues involved in *F. D. No. 19448* and *F. D. No. 19538* are in substance the same as those involved in *F. D. No. 19742*. In each of the cases an attempt is being made by the applicants to invade Rock Island-Pullman territory. If the Commission saw fit to permit Rock Island and Pullman to intervene and be treated as parties in *F. D. No. 19448* and *F. D. No. 19538* upon a showing of interest sufficient to warrant interven-
[fol. 833] tion there certainly would be no apparent justification in denying intervention in *F. D. No. 19742*.

III.

Belt asserts in its brief (p. 2) that neither the Rock Island nor Pullman acquired and the Commission did not undertake to confer upon either of them in Finance Docket Number 16252, *Pullman Railroad Company Control, etc.*, authority to handle export or import business through Lake Calumet Port and that neither the Rock Island nor Pullman has made application to the Commission for authority to do so. As a matter of fact, in *Pullman Railroad Company Control* the Commission showed that it was fully aware of the anticipated movements of export and import traffic at Lake Calumet Port, when it granted Rock Island

the right to lease and acquire the capital stock of Pullman, by stating (sheet 8):

> • • • Generally speaking the Lake Calumet district extends between 103rd and 130th Streets, the *harbor* being located east of Doty Avenue . . .
>
> Plans for the industrialization of the territory adjacent to the southern end of the lake have been under consideration for many years. In 1921 the State of Illinois passed appropriate legislation authorizing the construction of *a deep water harbor in Lake Calumet,* and granted to Chicago the right, title and interest to the property concerned. *This area is accessible by rail, highway, and water carriers,* and public utilities, such as gas, electricity, and water facilities necessary for industrial development are available. *The Federal* [fol. 834] *Government has done some dredging and the city has constructed docks and filled in a small area of land,* but considerable work remains before all the benefits planned are completed. (Italics supplied.)

IV.

As common carriers by railroad, Rock Island and Pullman are entitled to handle traffic moving in interstate and foreign commerce.

V.

Common carriers by railroad do not obtain, and it is not required that they should obtain, two certificates from the Interstate Commerce Commission, one authorizing them to engage in interstate commerce and one authorizing them to engage in foreign commerce.

VI.

Section 6(11) of the Interstate Commerce Act, upon which Belt relies in support of its position that Rock Island and Pullman are not complying with the Act,

specifically provides that when property may be or is transported from point to point in the United States, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers which may or do engage in the same in the following particulars: To [fol. 835] establish physical connection between the lines of the rail carrier and the dock at which interchange is to be made; and to establish proportional rates by rail to and from the ports to which the traffic is brought or from which it is taken by the water carrier. Section 6(11) actually presupposes the right to operate. The Section does not require that before a common carrier by railroad can engage in foreign commerce it must obtain a certificate of convenience and necessity from the Commission.

VII.

The Burlington Railroad case (*Chicago, B. & Q. R. Co. Operation*, 282 I.C.C. 249) cited by Belt was not a case involving foreign commerce, and simply held that a railroad cannot build a track to handle intrastate commerce only and later convert the track to one handling interstate commerce without an order from the Commission.

Respectfully submitted,

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois; [fol. 836] Joseph B. Fleming, John Bordes, Prudential Plaza, 130 E. Randolph Drive, Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 East Randolph Drive, Chicago 1, Illinois, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 837]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

ORDER ALLOWING NICKEL PLATE TO INTERVENE
—May 20, 1957

BELT RAILWAY COMPANY OF CHICAGO
TRACKAGE RIGHTS

In the Matter of Petition for Leave to Intervene in Opposition to the Application.

Present: Richard F. Mitchell, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That on April 25, 1957, an application was filed by the Belt Railway Company of Chicago, for authority to acquire trackage rights over railroad lines in the Lake Calumet Harbor area, Chicago, Ill., owned and operated by Illinois Central Railroad Company, Kensington and Eastern Railroad Company, Chicago South Shore and South Bend Railroad, and The Pennsylvania Railroad Company;

It further appearing, That on May 10, 1957, the New York, Chicago and St. Louis Railroad Company filed its petition for leave to intervene alleging petitioner and Chicago, Rock Island and Pacific and Pullman Railroad Companies are now and will continue to adequately serve the Lake Calumet Harbor Area and that service by applicant in the area would constitute an unjustifiable invasion of the territory served by petitioner;

It further appearing, That applicant on May 13, 1957, filed its reply to the petition alleging that it does not seek to encroach upon any legal operations performed, or to be performed by petitioner; that it seeks authority to handle export and import traffic which intervener may not lawfully handle; and that petitioner has no legal interest sufficient to justify its intervention;

And it further appearing, That the petitioner has shown an interest in the proceeding sufficient to warrant intervention;

It is ordered, That said New York, Chicago and St. Louis Railroad Company be, and it is hereby, permitted to intervene and be treated as a party to this proceeding;

And it is further ordered, That a copy of this order be served upon the Governor and public regulatory commission of the State of Illinois, and each of the parties to this proceeding.

Dated at Washington, D. C., this 20th day of May, A. D. 1957.

By the Commission, Commissioner Mitchell.

Harold D. McCoy, Secretary.

[fol. 838]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

ORDER ALLOWING ROCK ISLAND AND PULLMAN RAILROAD COMPANY TO INTERVENE—May 20, 1957

BELT RAILWAY COMPANY OF CHICAGO
TRACKAGE RIGHTS

In the Matter of Petition for Leave to Intervene in Opposition to the Application.

Present: Richard F. Mitchell, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That on April 25, 1957, an application was filed by The Belt Railway Company of Chicago, for authority to acquire trackage rights over railroad lines in the Lake Calumet Harbor Area, Chicago, Ill., owned and

operated by Illinois Central Railroad Company, Kensington and Eastern Railroad Company, Chicago, South Shore and South Bend Railroad, and The Pennsylvania Railroad Company;

It further appearing, That on May 6, 1957, the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company filed, jointly, their petition for leave to intervene in opposition alleging applicants's sole purpose in extending its line of railroad is to divert to its line traffic which would be adequately handled by petitioners;

It further appearing, That applicant on May 8, 1957, filed its reply to the petition alleging that it does not seek to encroach upon any legal operations performed, or to be performed, by petitioners; that it seeks authority to handle export and import traffic which interveners may not lawfully handle; and that petitioners have no legal interest sufficient to justify their intervention;

And it further appearing, That the petitioners have shown an interest in the proceeding sufficient to warrant intervention;

It is ordered, That said Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

It is further ordered, That a copy of this order be served upon the Governor and public regulatory commission of the State of Illinois, and each of the parties to this proceeding.

Dated at Washington, D. C., this 20th day of May, A. D. 1957.

By the Commission, Commissioner Mitchell.

Harold D. McCoy, Secretary.

[fol. 840]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

PETITION FOR LEAVE TO FILE REPLY TO BRIEF DATED MAY 10, 1957 OF THE BELT RAILWAY COMPANY OF CHICAGO—May 21, 1957

Comes now The New York, Chicago and St. Louis Railroad Company (hereinafter called "Nickel Plate"), and respectfully requests leave to file this its reply to the brief dated May 10, 1957 of The Belt Railway Company of Chicago (hereinafter called "The Belt Railway") in opposition to Nickel Plate's petition for authority to intervene in above proceeding.

Such leave is requested by Nickel Plate out of deference to the authority of the Commission although the nature and novelty of The Belt Railway brief in raising new questions of law and fact would make it appear that reply could be made as of right.

I.

The substance of The Belt Railway brief is that Nickel Plate has no right to serve the Lake Calumet area adjacent to its own railroad. Undoubtedly such proposition if accepted would be the premise for argument by The Belt [fol. 841] Railway later in the proceeding that the absence

of other authorized rail service in the area makes its own entry all the more necessary. It is obvious, therefore, that The Belt Railway is laboring under misconceptions of the law entitling railroads to serve territory tributary to their lines. It is equally clear that the Belt has misconceptions as to procedure in that it would have the Commission determine the rights of Nickel Plate in the territory without permitting Nickel Plate to participate in the proceeding and produce evidence. Mere examination of the map (Exhibit 6) attached to The Belt Railway's application shows that Nickel Plate has a vital interest in the area under its present and future development. And the incorporation by reference in The Belt Railway application of portions of the pleadings in Finance Docket No. 19538 (page 14, Belt Railway application) would entitle Nickel Plate to intervene in view of the Commission's authorization of Nickel Plate intervention in said docket.

II.

Before proceeding with a discussion of the substantive features of The Belt Railway brief, certain admissions and denials of statements of fact in said brief are desirable. Nickel Plate does not own tracks connecting its line of railroad with existing docks and terminals in the Lake Calumet Harbor Port area but it does connect with the Rock Island and Pullman Railroads which do serve such docks and terminals directly. Similarly, the Nickel Plate concurs and participates in tariffs under which traffic may be handled through the port by the Rock Island and Pullman Railroads. And significantly The Belt Railway also concurs in those tariffs showing it has recognized the right of the Rock Island and Pullman Railroads to serve the port. Nickel Plate is, therefore, vitally interested in traffic [fol. 842] now handled through the port although it does not yet directly serve said port area with owned or controlled lines. And Nickel Plate is vitally interested in the future port development, particularly on the east side of

the lake which it can serve directly. When the east side of the lake is developed, Nickel Plate will make such tariff publication as may be necessary to serve the area, but the provisions of the Interstate Commerce Act do not require Nickel Plate to file any petitions with the Interstate Commerce Commission for authority to construct tracks to industries or port facilities located on the east side of the lake.

III.

The Belt Railway claims that before Nickel Plate lawfully can handle interstate rail-water or water-rail traffic through the Port area, Nickel Plate must comply with Sections 6(11) and 1(18) of the Act. Nickel Plate admits that if it should endeavor to construct a line to the southwest side of the lake and thereby invade the Rock Island-Pullman territory, as is proposed by the various applicants in the related dockets before the Commission, it would have to file a Section 1(18) application. But Nickel Plate asserts that Section 6(11) does not require any application by it, regardless of the location of property and tracks owned by Nickel Plate, and no Section 1(18) authority is needed by it to serve the east side of the Lake.

The insistence by The Belt Railway on Nickel Plate's filing of a Section 6(11) application is novel particularly in view of the fact that The Belt Railway itself and the other applicants whose tracks The Belt Railway would use have not filed Section 6(11) applications. Thus, if the argument has merit, it disqualifies the applicants. Of course, Section 6(11) is designed to enforce construction of physical connections and establishment of rates between [fol. 843] rail and water carriers. This is evident from the use of the words "establish", "directing" and "required" in the statute. And before the Commission can enforce such a connection it must observe the standard of proof specified in Section 1(18) of the Act.

As for Section 1(18) the construction by Nickel Plate of tracks to the east side of the Lake is clearly of exempt

trackage so that Nickel Plate need never file Section 1(18) applications to serve such territory.

IV.

The Belt Railway also asserts that the geographic proximity of the Nickel Plate does not constitute a legal right or interest sufficient to justify intervention in this proceeding. The Commission should be well aware that this proceeding is not concerned solely with service to the southwest corner of the Lake, although that alone would be sufficient to justify Nickel Plate's intervention. This proceeding is the means whereby the applicants would establish a right to serve any and all industries and port facilities wherever located on the Lake. This is evident from the effort of The Belt Railway to exclude Nickel Plate from the proceeding. As for Nickel Plate's "preemptive rights" (if those are the correct words) in the area, Nickel Plate regards any effort by the applicants in these related dockets to serve the east side of the Lake as an invasion of its territory which it is best qualified, and they are unqualified, to serve.

Nickel Plate has, therefore, a clear legal right to be protected under the authority of *Western Pac. R. Co.* v. *Southern Pacific Co.*, 284 U. S. 47 (1931). The question of Nickel Plate's right to intervene has already been resolved in Finance Dockets 19448 and 19538 and in The Belt Railway application to serve this same area in Finance Docket No. [fol. 844] 19391, since dismissed at the instance of the applicant.

Respectfully submitted,

Eugene M. Smith, Thomas O. Broker, Attorneys for The New York, Chicago and St. Louis Railroad Company.

P. O. Box 6119, 3016 Terminal Tower, Cleveland 1, Ohio.

Dated: May 21, 1957.

Certificate of Service (omitted in printing).

[fol. 846]

BEFORE THE INTERSTATE COMMERCE COMMISSION

CHICAGO & EASTERN ILLINOIS RAILROAD
332 SOUTH MICHIGAN AVENUE • CHICAGO 4, ILLINOIS
LAW DEPARTMENT

DAVID O. MATHEWS
VICE PRESIDENT AND GENERAL COUNSEL

May 24, 1957

Interstate Commerce Commission
Washington 25, D. C.

Gentlemen:

Re: In the Matter of Application of The Belt Railway Company of Chicago, Trackage Rights, Finance Docket No. 19742.

Reference is made to the oppositions and briefs in support of opposition to the petition of the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company for leave to intervene and in support of opposition to petition of The New York, Chicago and St. Louis Railroad Company for leave to intervene, the first being dated May 7, 1957 and the latter being dated May 10, 1957.

We did not have available at the time these briefs were filed with the Commission the opinion of the Supreme Court of the United States in Nos. 36, 82, 114, decided April 22, 1957, reported in 77 S. Ct. 763. We wish to supplement the above-mentioned briefs by including reference to this opinion of the Supreme Court.

As the Commission will note, the Supreme Court has now held that in order to have standing to become a party in a proceeding under Section 5(2) of the Interstate Commerce Act, the party must have a legal right or interest

and be injuriously affected by any order that the Commission may enter in the proceeding. As the Commission will further note, the Supreme Court has held that such a legal interest is not equivalent to "concern".

We submit that the test established by the *Alleghany* case has not been met by the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company or by The New York, Chicago and St. Louis Railroad Company.

Sincerely yours,

/s/ DAVID O. MATHEWS
Vice President and General Counsel

[fol. 847]

CC: John Guandolo, Esq.
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J. S. Chartrand, Esq.
Manager, Board of Trade
1074 Board of Trade Building
Chicago 4, Illinois

[fol. 849]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19448

APPLICATION OF THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY AND THE INDIANA HARBOR BELT RAILROAD COMPANY FOR AUTHORITY FOR CONSTRUCTION BY THE FIRST NAMED COMPANY AND FOR OPERATION BY THE LATTER COMPANIES OF A LINE OF RAILROAD FROM 126TH STREET, CHICAGO, TO THE LAKE CALUMET HARBOR PORT OF CHICAGO, IN COOK COUNTY, ILLINOIS—Filed May 24, 1957

Finance Docket No. 19538

APPLICATION OF THE ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, AND THE PENNSYLVANIA RAILROAD COMPANY FOR AUTHORITY TO CONSTRUCT AND OPERATE CONNECTION TRACKS FROM A POINT NEAR DOTY AVENUE, CHICAGO, TO THE LAKE CALUMET HARBOR PORT OF CHICAGO, IN COOK COUNTY, ILLINOIS, AND FOR AUTHORITY OF THE FIRST AND LAST NAMED COMPANY AND THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD TO ACQUIRE TRACKAGE RIGHTS OVER THE PROPOSED AND CERTAIN EXISTING TRACKS—Filed May 24, 1957

Now come the applicants in the above entitled proceeding and say:

I

The Commission by its orders dated September 25, 1956 and January 16, 1957, permitted the Chicago, Rock Island

and Pacific Railroad Company, Pullman Railroad Company, and The New York, Chicago and St. Louis Railroad Company to intervene in Finance Docket No. 19448. Similar orders dated November 29, 1956 and January 17, 1957 permitted the intervention of these same parties in Finance [fol. 850] Docket No. 19538.

II

Intervention was also sought by these same railroads in Finance Docket No. 19742 in which the Belt Railway Company of Chicago is an applicant. The Belt Railway Company of Chicago, under date of May 7, 1957 filed its opposition and brief in support thereof to this proposed intervention.

III

Applicants in Finance Docket Nos. 19448 and 19538 now request the Commission to reconsider its orders permitting the Chicago, Rock Island and Pacific Railroad Company, Pullman Railroad Company and The New York, Chicago and St. Louis Railroad Company to intervene in these proceedings in the light of the reasons stated in the Belt Railway Company of Chicago opposition and brief dates May 7, 1957 and May 10, 1957. After such reconsideration, the Commission is requested to vacate its order permitting such intervention.

Respectfully submitted,

Robert H. Bierma, Erle J. Zoll, John C. Lawyer, Wm. J. O'Brien, Richard O. Olson, Counsel.

May 23, 1957.

[fol. 851] Certificate of Service (omitted in printing).

[fol. 876]

BEFORE THE INTERSTATE COMMERCE COMMISSION

F. D. No. 19448

MICHIGAN CENTRAL RAILROAD COMPANY, et al.,
Construction, etc.

F. D. No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.,
Construction, etc.

REPLY OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY TO PETITION FOR RECONSIDERATION OF AND REQUEST TO VACATE ORDERS PERMITTING INTERVENTION—Filed May 29, 1957

Now come the Chicago, Rock Island and Pacific Railroad Company (hereinafter referred to as "Rock Island") and Pullman Railroad Company (hereinafter referred to as "Pullman") and request that applicants' petition for reconsideration and vacation of the orders of the Commission permitting Rock Island and Pullman to intervene in these proceedings be denied, and for reasons therefor, state:

I.

It is submitted that applicants have delayed unreasonably in asserting grounds upon which the petitions for leave to intervene filed by Rock Island and Pullman should be denied. As the record demonstrates, Rock Island and Pullman filed their petition to intervene in F. D. No. 19448 on August 30, 1956 and in F. D. No. 19538 on November 19, [fol. 877] 1956. By order dated September 25, 1956 in F. D. No. 19448 and order dated November 29, 1956 in F. D. No. 19538, the Commission permitted Rock Island and

Pullman to intervene and be treated as parties in both proceedings upon a showing that they had an interest in the proceedings sufficient to warrant intervention. At the time that Rock Island and Pullman were permitted to intervene in these proceedings they possessed a definite legal right which was seriously threatened by applicants, which legal right continues to be threatened. Cf. *Western Pacific* v. *Southern Pac. Co.*, 284 U. S. 47, 51-2 (1931) and *Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295, 304 (1940).

As applicants did not avail themselves of the opportunity of filing a reply in opposition to the petitions for leave to intervene within the time limit prescribed by Section 1.72(d) of the General Rules of Practice, it must be concluded that by not doing so, they recognized the propriety of Rock Island and Pullman appearing in these proceedings and to be treated as parties with the right to have notice and appear at the taking of testimony, produce and cross-examine witnesses, and be heard by counsel upon brief and oral argument. Manifestly, applicants continued to recognize the interest of Rock Island and Pullman in these proceedings sufficient to warrant intervention when [fol. 878] they failed to request the Commission to vacate its orders permitting intervention within the time limit prescribed in Section 1.101(e) of the General Rules of Practice.

II.

In relying solely upon the reasons set forth by The Belt Railway Company of Chicago (hereinafter referred to as "Belt") in its reply to the petition for leave to intervene filed by Rock Island and Pullman in F. D. No. 19742, which pleading by Belt contains charges based upon a misconception of the facts and law and becloud the issues involved in these proceedings, applicants have failed to set forth grounds sufficient to justify vacating the Commission's orders permitting intervention. Belt contended in

its reply that as a prerequisite to handling rail-water or water-rail movements traffic through Lake Calumet Port, Rock Island and Pullman would be required to comply with Sections 6(11) and 1(18) of the Interstate Commerce Act. As pointed out in the answer filed by Rock Island and Pullman to Belt's pleading, no authority is needed under Section 1(18) by Rock Island and Pullman to serve territory heretofore served; and Section 6(11) is not applicable as it is only designed to enforce construction of physical connections and establishment of rates between rail and water carriers. Cf. *U. S.* v. *Pennsylvania R. Co.*, 323 U. S. 612 (1945).

[fol. 879] III.

It would appear that any question as to the propriety of Rock Island and Pullman appearing in these proceedings has been resolved by the Commission's decision in F. D. No. 16252, *Pullman Railroad Company Control, etc.* where it showed that it was fully aware of the anticipated movement of export and import traffic at Lake Calumet Port when it granted Rock Island the right to lease and acquire the capital stock of Pullman; and by the decision of the Supreme Court of Illinois in *Chicago, R. I. & P. R. Co.* v. *Illinois Commerce Com'n*, 111 N.E. 2d 136 (1953). The case before the Supreme Court of Illinois was brought to determine whether the Illinois Central should be permitted to construct a track at Lake Calumet Port which was already being served by Rock Island and Pullman. The Supreme Court held that since Rock Island and Pullman had formulated the original development of the area and had adequately served the area after Illinois Central had withdrawn from there because of lack of business, and had indicated a willingness to construct spurs to serve contemplated industries when they moved into the area, the Illinois Central would be denied permission to construct a track in such area because of contemplated industrial

development. In deciding the case in favor of Rock Island and Pullman, the Supreme Court said (p. 141):

> [fol. 880] . . . It would appear that the original development of the area in question was formulated by Pullman. The Pullman interests purchased 4000 acres of land adjacent to the Lake Calumet harbor area, they constructed and maintained a spur track into the area when Kensington withdrew because of scarcity of business, and they constructed and maintain a spur serving the only industry in the immediate harbor area at the present time. Their line is more adjacent to the Lake Calumet harbor area and they, apparently, have met the demands of whatever industries have required service in the area to the present time. There are indications that there will be other interests in the area which will require the services of railroads. Pullman has indicated its willingness to construct spurs to these industries at such time as they locate in the area. The industries fringing the area are all served by Pullman. The record states that none of these industries is served either by Kensington or by the appellant. It is true that a spur constructed by the Illinois Central at the present time will not do immediate damage to Pullman. This is so only because there are no industries in the area at the immediate time which are not already served by Pullman. However, if a spur is constructed by the Illinois Central into the area and it begins to haul freight and other commodities into the area and serve such industries that may grow up along its spur, it is taking business out of the area to its own benefit. Dangers of this type of operation are immediately apparent. Carriers taking no interest in, or giving no service in, an area pioneered by another carrier who has taken the bitter with the sweet throughout the years, are given an opportunity on the basis of future convenience and necessity to invade the territory already served by an

existing carrier and drive it out of the territory entirely. By advocating special interests here, such as the hauling of coal and the locating of specially chosen industries along the extension which it proposes to build, the Illinois Central seeks to enter the Lake Calumet harbor area in competition with the Pullman railroad which is already serving the only industry in the area. For years, and even after the Illinois Central and its wholly owned subsidiary, Kensington, had [fol. 881] withdrawn from the area because of lack of business, Pullman continued to serve those interests which remained in the area. This, it seems to this court, is the very type of situations toward which our broad general rule disallowing competition was directed. It has been determined under our law to protect railroads in their existence to allow them the fruits of their labors. That they do this without competition redounds to the benefit of the public in lower rates and controlled operations. We feel that the broad general rule as enunciated in the Gulf Transport Co. case and all other related cases requires that we protect Pullman in this matter. If we are to allow the reasoning offered by the appellant here to overcome this rule, new territories which have been served to date by existing carriers are open to invasion by any other carrier which presently passes through the area noncompetitively. Such policy is not in accord with the previous decisions of this court.

IV.

The petitions to intervene filed by Rock Island and Pullman in these proceedings met the requirements of Section 1.72 of the General Rules of Practice by setting forth the grounds of the proposed intervention and the position and interest of petitioners in the proceedings. The petitions were timely filed and did not seek to broaden the issues involved in the proceedings.

V.

It would indeed be anachronous if the Commission were to vacate the order granting Rock Island and Pullman leave to intervene in these proceedings when it has in the [fol. 882] past permitted the Illinois Central, Kensington and Eastern and Chicago, South Shore and South Bend to intervene in opposition to the granting of the application in F. D. No. 19448; and permitted Michigan Central, New York Central and Indiana Harbor Belt, to intervene in opposition to the granting of the application in F. D. No. 19538 upon the ground of expected future injury to petitioners. In the petitions for leave to intervene filed by Illinois Central, Kensington and Eastern and Chicago, South Shore and South Bend in F. D. No. 19448 allegations were made that petitioners lines were situated in close proximity to the property in Lake Calumet Port; that they were interested in the development of Lake Calumet Port and expect to participate in future traffic moving to and from the Port; that they had for some time participated and would continue to participate in discussions and conferences relating to future rail service to the Port; and that the granting of the application would affect existing competitive rights in this territory and would permit applicants to inaugurate service into territory which petitioners expect to serve. In the petition for leave to intervene filed by Michigan Central, New York Central and Indiana Harbor Belt in F. D. No. 19538 allegations were made that petitioners would serve and planned to serve Lake Calumet Port; that they were prepared to expend [fol. 883] sums of money to place themselves in a position to serve the Port; that they were greatly interested in the development of the Port and expect to participate in the future traffic moving to and from the Port; that they had for some time participated in and would continue to participate in conferences relating to future rail service to the Port; and that the granting of the application would affect existing competitive right in this territory and would

permit applicants to inaugurate service in the territory which petitioners expect to serve.

Respectfully submitted,

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois, Joseph B. Fleming, John Bordes, Prudential Plaza, 130 E. Randolph Drive, Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 East Randolph Drive, Chicago 1, Illinois, Of Counsel.

May 28, 1957

[fol. 884] Certificate of Service (omitted in printing).

[fol. 887]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket 19538

APPLICATION OF THE ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY for Authority to Construct and Operate Connection Tracks From a Point Near Doty Avenue, Chicago, to The Lake Calumet Harbor Port of Chicago, in Cook County, Illinois, and for Authority of The First and Last Named Company and THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD to Acquire Trackage Rights Over the Proposed and Certain Existing Tracks.

REPLY OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY TO PETITION FOR RECONSIDERATION FILED BY APPLICANTS IN FINANCE DOCKET 19538—May 31, 1957

Comes now The New York, Chicago and St. Louis Railroad Company, (hereinafter called "Nickel Plate") and

files this its reply to the petition for reconsideration filed by applicants in Finance Docket 19538.

I.

Three finance dockets are presently pending covering applications by various railroad companies to invade the Lake Calumet area which they do not now serve, as follows:

1. Finance Docket No. 19448—Application of New York Central and subsidiaries to construct a track to the southwest corner of Lake Calumet, Chicago, Illinois. A petition has been filed for withdrawal of this application to permit the applicants to operate over the tracks involved in Finance Docket No. 19538.

2. Finance Docket No. 19538—Application of The Pennsylvania Railroad Company, Illinois Central Railroad Company, The Chicago South Shore and South Bend Railroad and subsidiaries to construct tracks and for trackage rights thereover to the southwest corner of Lake Calumet.

[fol. 888] 3. Finance Docket No. 19742—Application of The Belt Railway of Chicago for trackage rights over the track sought to be constructed under Finance Docket No. 19538. The Belt Railway had previously filed an application in Finance Docket No. 19391 to construct its own track to the Lake but has withdrawn the same in favor of Finance Docket No. 19742.

The applicants in the first two dockets now seek by petition for reconsideration to have the Rock Island, Pullman, and Nickel Plate Railroads excluded from participation in said dockets and from service in the Lake Calumet area and assign as their reasons the arguments made for exclusion by the Belt Railway in Finance Docket No. 19742 in briefs dated May 7 and May 10, 1957. Despite such arguments made by The Belt Railway, Nickel Plate was authorized, by order dated May 20, 1957, to intervene in said Finance Docket No. 19742.

II.

In reply to said petition for reconsideration, Nickel Plate incorporates herein by reference the facts and contentions set forth in its reply dated May 21, 1957 to the brief of The Belt Railway, which reply is attached hereto as Exhibit A, with three changes or additions:

(a) The instant reply may be filed as of right whereas in The Belt Railway application leave was requested to file said answer out of deference to the authority of the Commission; although the brief of the Belt Railway raised new questions of law and fact.

(b) Nickel Plate points out that no objection was made by the petitioners at the time Nickel Plate filed its petition for leave to intervene.

(c) New York Central has informed the Commission that it proposes to withdraw its application in Finance Docket No. 19448.

Wherefore, it is respectfully requested that the petition for reconsideration, dated May 23, 1957, filed by the appli- [fol. 889] cants in Finance Docket No. 19538 be denied and that The New York, Chicago and St. Louis Railroad Company be permitted to continue its intervention in said proceedings.

Respectfully submitted,

Eugene M. Smith, Thomas O. Broker, Attorneys for The New York, Chicago and St. Louis Railroad Company, P. O. Box 6119, 3016 Terminal Tower, Cleveland 1, Ohio.

Dated: May 31, 1957

Certificate of Service (omitted in printing).

[fol. 891]

EXHIBIT A TO REPLY

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of Application of THE BELT RAILWAY COMPANY OF CHICAGO under Section 5(2) of the Interstate Commerce Act for approval and authorization to acquire trackage rights over railroad lines owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON AND EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

PETITION FOR LEAVE TO FILE REPLY TO BRIEF DATED MAY 10, 1957 OF THE BELT RAILWAY COMPANY OF CHICAGO—May 21, 1957

Comes now The New York, Chicago and St. Louis Railroad Company (hereinafter called "Nickel Plate"), and respectfully requests leave to file this its reply to the brief dated May 10, 1957 of The Belt Railway Company of Chicago (hereinafter called "The Belt Railway") in opposition to Nickel Plate's petition for authority to intervene in above proceeding.

Such leave is requested by Nickel Plate out of deference to the authority of the Commission although the nature and novelty of The Belt Railway brief in raising new questions of law and fact would make it appear that reply could be made as of right.

I.

The substance of The Belt Railway brief is that Nickel Plate has no right to serve the Lake Calumet area adjacent to its own railroad. Undoubtedly such proposition if ac-

[fol. 892] cepted would be the premise for argument by The Belt Railway later in the proceeding that the absence of other authorized rail service in the area makes its own entry all the more necessary. It is obvious, therefore, that The Belt Railway is laboring under misconceptions of the law entitling railroads to serve territory tributary to their lines. It is equally clear that the Belt has misconceptions as to procedure in that it would have the Commission determine the rights of Nickel Plate in the territory without permitting Nickel Plate to participate in the proceeding and produce evidence. Mere examination of the map (Exhibit 6) attached to The Belt Railway's application shows that Nickel Plate has a vital interest in the area under its present and future development. And the incorporation by reference in The Belt Railway application of portions of the pleadings in Finance Docket No. 19538 (page 14, Belt Railway application) would entitle Nickel Plate to intervene in view of the Commission's authorization of Nickel Plate intervention in said docket.

II.

Before proceeding with a discussion of the substantive features of The Belt Railway brief, certain admissions and denials of statements of fact in said brief are desirable. Nickel Plate does not own tracks connecting its line of railroad with existing docks and terminals in the Lake Calumet Harbor Port area but it does connect with the Rock Island and Pullman Railroads which do serve such docks and terminals directly. Similarly, the Nickel Plate concurs and participates in tariffs under which traffic may be handled through the port by the Rock Island and Pullman Railroads. And significantly The Belt Railway also concurs in those tariffs showing it has recognized the right of the Rock Island and Pullman Railroads to serve the port. Nickel Plate is, therefore, vitally interested in traffic now [fol. 893] handled through the port although it does not yet directly serve said port area with owned or controlled lines. And Nickel Plate is vitally interested in the future port

development, particularly on the east side of the lake which it can serve directly. When the east side of the lake is developed, Nickel Plate will make such tariff publication as may be necessary to serve the area, but the provisions of the Interstate Commerce Act do not require Nickel Plate to file any petitions with the Interstate Commerce Commission for authority to construct tracks to industries or port facilities located on the east side of the lake.

III.

The Belt Railway claims that before Nickel Plate lawfully can handle interstate rail-water or water-rail traffic through the Port area, Nickel Plate must comply with Sections 6(11) and 1(18) of the Act. Nickel Plate admits that if it should endeavor to construct a line to the southwest side of the lake and thereby invade the Rock Island-Pullman territory, as is proposed by the various applicants in the related dockets before the Commission, it would have to file a Section 1(18) application. But Nickel Plate asserts that Section 6(11) does not require any application by it, regardless of the location of property and tracks owned by Nickel Plate, and no Section 1(18) authority is needed by it to serve the east side of the Lake.

The insistence by The Belt Railway on Nickel Plate's filing of a Section 6(11) application is novel particularly in view of the fact that The Belt Railway itself and the other applicants whose tracks The Belt Railway would use have not filed Section 6(11) applications. Thus, if the argument has merit, it disqualifies the applicants. Of course, Section 6(11) is designed to enforce construction of physical connections and establishment of rates between rail and water [fol. 894] carriers. This is evident from the use of the words "establish" "directing" and "required" in the statute. And before the Commission can enforce such a connection it must observe the standard of proof specified in Section 1(18) of the Act.

As for Section 1(18) the construction by Nickel Plate of tracks to the east side of the Lake is clearly of exempt

trackage so that Nickel Plate need never file Section 1(18) applications to serve such territory.

IV.

The Belt Railway also asserts that the geographic proximity of the Nickel Plate does not constitute a legal right or interest sufficient to justify intervention in this proceeding. The Commission should be well aware that this proceeding is not concerned solely with service to the southwest corner of the Lake, although that alone would be sufficient to justify Nickel Plate's intervention. This proceeding is the means whereby the applicants would establish a right to serve any and all industries and port facilities wherever located on the Lake. This is evident from the effort of The Belt Railway to exclude Nickel Plate from the proceeding. As for Nickel Plate's "preemptive rights" (if those are the correct words) in the area, Nickel Plate regards any effort by the applicants in these related dockets to serve the east side of the Lake as an invasion of its territory which it is best qualified, and they are unqualified, to serve.

Nickel Plate has, therefore, a clear legal right to be protected under the authority of *Western Pac. R. Co.* v. *Southern Pacific Co.*, 284 U.S. 47 (1931). The question of Nickel Plate's right to intervene has already been resolved in Finance Dockets 19448 and 19538 and in The Belt Railway application to serve this same area in Finance Docket [fol. 895] No. 19391, since dismissed at the instance of the applicant.

Respectfully submitted,

Eugene M. Smith, Thomas O. Broker, Attorneys for The New York, Chicago and St. Louis Railroad Company.

P. O. Box 6119, 3016 Terminal Tower, Cleveland 1, Ohio.

Dated: May 21, 1957

Certificate of Service (omitted in printing).

[fol. 906]

BEFORE THE INTERSTATE COMMERCE COMMISSION

162338 VLM

May 31, 1957
F. D.—19448
F. D.—19538

Mr. John Guandolo, GA
Chicago, Rock Island &
Pacific RR. Co.
139 W. Van Buren St.
Chicago 5, Ill.

Dear Mr. Guandolo:

The Commission is in receipt of your letter of May 28, transmitting two originals and additional copies of the reply of Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company to applicants' petition for reconsideration of and request to vacate orders permitting intervention in the above-numbered proceedings.

By letter dated May 29, 1957, the Commission returned the petition tendered by applicants. This petition was not filed for the reasons stated in Rule 1.101(e) of the Commission's General Rules of Practice. Therefore, returned herewith are the copies of the reply of intervenors, an original being retained for our general correspondence file.

Respectfully,

Secretary.

[fol. 907]

BEFORE THE INTERSTATE COMMERCE COMMISSION

164012 VLM

June 5, 1957
F.D. No. 19448
F.D. No. 19538

Mr. Thomas O. Broker, AGC
The New York, Chicago & St. Louis RR. Co.
P. O. Box 6119
Cleveland, Ohio

Dear Sir:

The Commission is in receipt of your letters of May 31, transmitting an original and two copies each of the reply of The New York, Chicago and St. Louis RR. Co. to applicants' petition for reconsideration of orders permitting intervention in the above-numbered proceedings.

By letter dated May 29, the Commission returned the petition tendered by applicants. This petition was not filed for the reasons stated in Rule 1.101(e) of the Commission's General Rules of Practice. Therefore, returned herewith are the copies of the reply of intervenors, the originals being retained for our general correspondence file.

Respectfully,

Secretary

Encls

[fol. 919]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

APPLICATION OF THE ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY for Authority to Construct and Operate Connection Tracks From a Point near Doty Avenue, Chicago, to The Lake Calumet Harbor Port of Chicago, in Cook County, Illinois, and for Authority of The First and Last Named Company and THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD to Acquire Trackage Rights Over the Proposed and Certain Existing Tracks.

Finance Docket No. 19742

APPLICATION OF THE BELT RAILWAY COMPANY OF CHICAGO for Authority to Acquire Trackage Rights Over Lines of Railroad Leading to The Lake Calumet Harbor Port of Chicago, Illinois, Owned, Operated, or to Be Constructed by ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

MOTION TO DISMISS FOR LACK OF JURISDICTION—
Filed September 9, 1957

Come now The New York, Chicago and St. Louis Railroad Company and the Chicago, Rock Island and Pacific Railroad Company and respectfully request dismissal by the Interstate Commerce Commission, for lack of jurisdic-

tion under Section 5(2) of the Interstate Commerce Act, of the applications of Illinois Central Railroad Company, The Pennsylvania Railroad Company, Chicago, South Shore and South Bend Railroad, and The Belt Railway Company of Chicago, under Section 5(2) of said Act, for trackage rights over lines of railroad proposed to be constructed to serve the Lake Calumet Harbor District, Chicago, Illinois.

I.

The Scope of the Applications

The substance of this motion is that the Interstate Commerce Commission (hereinafter called the Commission) does not have jurisdiction under Section 5(2) of the Interstate Commerce Act (hereinafter called the Act) to approve applications for trackage rights over tracks which [fol. 920] have not yet been constructed. A review of the applications filed shows that the various applicants listed above have requested approval and authorization under Section 5(2) of trackage rights over tracks not yet constructed or owned or operated by a common carrier and have not sought approval and authorization for such operation under Section 1(18) of the Act:

> In the Section 1(18) application in Finance Docket 19538 the Kensington and Eastern proposes to construct a load track 2900 feet in length. In the accompanying Section 5(2) application, Illinois Central, Pennsylvania and the South Shore seek approval and authorization of trackage rights over said lead track.
>
> In said Section 1(18) application, Illinois Central proposes to construct and operate over a 630 ft. extension to said track. In the accompanying Section 5(2) application, Pennsylvania and South Shore seek approval and authorization of trackage rights over such extension.
>
> In said Section 1(18) application, Pennsylvania proposes to construct a further extension of said track

4030 ft. in length in behalf of The Philadelphia, Baltimore and Washington Railroad Company over which Pennsylvania would operate. In the accompanying Section 5(2) application Illinois Central and South Shore seek trackage rights over said extension.

In Finance Docket 19742 The Belt Railway Company of Chicago seeks approval and authorization under Section 5(2) of the Act of trackage rights over the tracks proposed to be constructed and owned by The Kensington and Eastern, Illinois Central, and Philadelphia, Baltimore and Washington Railroad Company, respectively.

[fol. 921]

II.

The Commission Does Not Have Authority to Approve and Authorize Trackage Rights Under Section 5(2) of the Act Over Tracks Not in Existence.

Section 5(2)(a)(ii) states in part:

"(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in Subdivision (b)—

"(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines *owned or operated* by any other such carrier, and terminals incidental thereto." (Emphasis supplied.)

It is obvious from the use of the words "owned or operated" that Section 5(2)(a)(ii) relates only to existing tracks and does not encompass operation, such as is here proposed, over tracks not yet constructed.

This construction of Section 5(2)(a)(ii) as relating only to facilities actually in existence when the application is filed is borne out by *International-G.N.R. Co. Trustee Trackage Rights,* 275 I.C.C. 27 (1949) stating (pages 32-33):

"The applicant has not presented the usual contract or agreement ordinarily found in cases of this kind with the company owning the track desired to be used. It prays relief under section 5(2) or, in the alternative under section 1(18) or (21) or section 3(5) of the act if the provisions of the two sections last mentioned, or either of them, should be found applicable by the Commission. *Inasmuch as the transaction proposed relates to operation by the applicant over a track already in place and operated by another carrier it is governed by section 5(2) of the act and not by section 1(18).*" (Emphasis supplied.)

The clear intention of this statement is that when a proposed transaction relates to operation by an applicant over a track which is not already in place and operated by another carrier, it is governed by Section 1(18) of the Act and not by Section 5(2).

As is well known, prior to the Transportation Act of 1940, all trackage arrangements, whether or not the tracks [fol. 922] were in existence, were cognizable under Section 1(18) of the Act, and it was not until 1940 that Section 5(2) contained any reference to trackage rights. The legislative history of the 1940 Act shows that Congress considered its enactment of Section 5(2)(a)(ii) as an aspect of the unification problem. See Senate Report No. 4383, 76th Congress, 1st Session, page 29. As a part of the unification problem, Congress could only have been considering existing facilities and not efforts to invade new territory over tracks not yet constructed. This is confirmed by the use of the words "owned or operated", referred to earlier. Section 1(18) still applies, therefore, to tracks not owned or operated when the application is filed.

This construction of Sections 1(18) and 5(2) is confirmed by the Commission's Rules as to Construction, Extension, Acquisition or Operation of Railroad Lines. 49 C.F.R. §41.1(d), which relates to Section 1(18) applications, requires an applicant to state:

"Whether it is proposed * * * (2) to acquire and operate, or to operate, a line of railroad not at the time owned or being operated by a common carrier."

This rule then construes Section 1(18) as relating to operations over a line *not at the time* owned or operated by a common carrier and shows that Section 5(2) relates only to trackage rights over a line of railroad which *is at the time* owned or operated by a common carrier.

Since the segments of the extension to Lake Calumet proposed to be built by the Kensington and Eastern, Illinois Central, and Pennsylvania, respectively, do not exist and hence are not owned or operated, the applications of Illinois Central, Pennsylvania, South Shore, and The Belt Railway under Section 5(2) of the Act for trackage rights over such extension should be dismissed for lack of jurisdiction.

Wherefore, it is respectfully requested that the portions of the application filed in Finance Docket 19538 by Illinois Central Railroad Company, The Pennsylvania Railroad Company, and Chicago, South Shore and South Bend Railroad for approval and authorization under Section 5(2) of [fol. 923] the Interstate Commerce Act of trackage rights over the extension of line proposed to be constructed to Lake Calumet and the entire application filed in Finance Docket 19742 by The Belt Railway Company of Chicago for approval and authorization under Section 5(2) of the Interstate Commerce Act of trackage rights over said proposed extension of line be dismissed by the Interstate Commerce Commission for lack of jurisdiction.

Respectfully submitted,

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois; Joseph B. Fleming, John L. Bordes, 130 E. Randolph Drive, Chicago 1, Illinois, Counsel for Chicago, Rock Island and Pacific Railroad Company.

E. M. Smith, Thomas O. Broker, P. O. Box 6119, Cleveland 1, Ohio, Counsel for The New York, Chicago and St. Louis Railroad Company.

Dated: September 6, 1957

Certificate of Service (omitted in printing).

[fol. 925]

BEFORE THE INTERSTATE COMMERCE COMMISSION

IN THE MATTER
OF THE

APPLICATION OF THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority Under Section 5(2) of the Interstate Commerce Act to Acquire Trackage Rights on Behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY Over the Lines of Railroad Owned or Operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

Finance Docket No. 19921

APPLICATION—Filed September 9, 1957

To the Interstate Commerce Commission:

By this Application, under Section 5(2) of the Interstate Commerce Act, The Michigan Central Railroad Company,

The New York Central Railroad Company and Indiana Harbor Belt Railroad Company, hereinafter sometimes referred to collectively as applicants, or individually as Michigan Central, New York Central and Indiana Harbor [fol. 926] Belt, seek authority for New York Central and Indiana Harbor Belt to acquire trackage rights over a portion of the lines of Illinois Central Railroad Company, Kensington & Eastern Railroad Company and The Pennsylvania Railroad Company, as are now existing, or to be constructed, by the connection of the lines of Kensington & Eastern Railroad Company and Michigan Central at a point west of the Lake Calumet Harbor in the City of Chicago, County of Cook, State of Illinois, and continuing over the lines of Illinois Central Railroad Company and The Pennsylvania Railroad Company to the connection of The Pennsylvania Railroad Company with the Chicago Regional Port District, in the City of Chicago, County of Cook, State of Illinois. The applicants have on file before this Commission, in Finance Docket No. 19448, an Application for an extension of their lines from approximately the point of origin in this application to a destination described as being a point within the Chicago Regional Port District in the said City, County and State.

• • • • • • •

[fol. 944] (c) Information respecting the nature of the transaction proposed and terms and conditions thereof.

(c) 1 By this application Michigan Central, New York Central and Indiana Harbor Belt seek authority for New York Central and Indiana Harbor Belt to acquire trackage rights over the lines of the Illinois Central Railroad Company, Kensington & Eastern Railroad Company and The Pennsylvania Railroad Company. Some of the lines over which trackage is sought are in existence and others are to be constructed only after authorization from this Commission. The Pennsylvania Railroad Company has requested authority to construct certain tracks on behalf of the Philadelphia, Baltimore & Washington Railroad Com-

pany and the Kensington & Eastern Railroad Company seeks similar authority for certain construction in Finance Docket No. 19538. The applicants seek authority to acquire trackage rights on behalf of New York Central and Indiana Harbor Belt over the said lines, as constructed and to be constructed, to enable them to operate from a point on the line of Michigan Central near 124th Street in the City of Chicago to a connection with the tracks of the Chicago Regional Port District near 130th Street in the City of Chicago, as shown on Exhibit 6, attached hereto.

(c) 2 The terms and conditions of the contracts pursuant to which the proposed transaction is to be effected are attached hereto as Exhibits 7a, 7b, 7c, 7d, 7e and 7f.

[fol. 945] (c) 3 There is a financial relationship not previously expanded existing at the present time between Indiana Harbor Belt and The Pennsylvania Railroad Company. This relationship arises out of ownership of the Calumet Western Railway Company by Indiana Harbor Belt, The Pennsylvania Railroad Company and Chicago, Rock Island & Pacific Railroad Company. The ownership and operation of Calumet Western Railway Company has been in effect since February 21, 1900, and in no way is associated with the applications now pending before this Commission for entry into the Chicago Regional Port District.

(c) 4 New York Central and Indiana Harbor Belt seek trackage rights from their line of railroad originating on Michigan Central tracks near 124th Street in the City of Chicago as indicated on the map attached hereto as Exhibit 6. The point of origin is indicated on the said Exhibit as being near 124th Street, north of 130th Street, in the City of Chicago and is marked "M.C.R.R." at which point a crossover will be effected from the Michigan Central tracks to the tracks of the Kensington & Eastern Railroad Company; thence generally southeasterly over existing tracks owned by Kensington & Eastern Railroad Company for a distance of approximately 3,300 feet as

indicated by the heavy blue line containing the letters [fol. 946] "K. & E. R. R." on the said exhibit; thence generally easterly on the heavy broken blue line on the said exhibit, between the points as indicated by the letters "K. & E. R. R.", on the west, and "I. C. R. R.", on the east, a distance of approximately 2,900 feet, the approval for the construction of the track by Kensington & Eastern Railroad Company is presently pending before this Commission; thence generally, in an arc, northeasterly, on the heavy blue broken line shown on the said Exhibit, and contained between the extremities of the arrow designated "I. C. R. R.", for a distance of approximately 630 feet, the approval for the construction of which is presently being sought from this Commission by Illinois Central Railroad Company; thence generally northwesterly on the heavy blue broken line designated by the letters "P. R. R.", approximately parallel to, and north of, 130th Street, on the said Exhibit, and the west end of which will connect with the Chicago Regional Port District, a distance of approximately 4,030 feet, authority for the construction of which is presently being sought from this Commission by the Pennsylvania Railroad Company.

(c) 5 The only property involved in this application is the trackage and necessary appurtenances of the Kensington & Eastern Railroad Company, Illinois Central Rail- [fol. 947] road Company and The Pennsylvania Railroad Company between the connection of the applicants and the Kensington & Eastern near 124th Street, Chicago, and the connection of the Kensington & Eastern with the Illinois Central and thence the Pennsylvania tracks with the tracks of the Chicago Regional Port District near 130th Street, in the City of Chicago, as described in greater detail in the agreements attached hereto as Exhibits 7a, 7b, 7c, 7d, 7e and 7f.

(c) 6 The value of the properties involved in the proposed transaction have not been found by the Commission,

and there has been no appraisal of the value of such properties for the purpose of the proposed transaction.

(c) 7 The policy and practice of the parties concerning reserves for depreciation and similar reserves will not be involved and are therefore "not applicable" in light of the terms of the agreements attached hereto as Exhibits 7a, 7b, 7c, 7d, 7e and 7f.

(c) 8 No securities will be acquired or sold in connection with the proposed transaction.

(c) 9 The applicants have not agreed to assume obligation or liability in respect to any encumbrance upon the property in the proposed transaction.

[fol. 948] (c) 10 No consolidation or merger is proposed. Not applicable.

(d) Facts and circumstances relied upon to show that the proposed transaction is within the scope of Section 5(2)(a) of the Interstate Commerce Act, will be consistent with the public interest, and will otherwise be within the requirements of Section 5.

(d) 1 In the case of any proposed transaction:

(1) The acquisition of the trackage rights sought by the New York Central and Indiana Harbor Belt into the Calumet Harbor Port Area is consistent with the public interest and required by the public convenience and necessity as is more fully indicated in the Application under Section 1(18) for an extension of line into that area by the applicants previously filed, and to be contemporaneously heard, in Finance Docket No. 19448 and in their return to the Commission's questionnaire.

(2) The financial considerations involved in the proposed transaction are fully indicated and disclosed by the statements and accompanying exhibits filed with the applicants' Section 1(18) Application, and the return thereto to the Commission's questionnaire in Finance Docket No.

19448. The acquisition of trackage rights in this Appli-
[fol. 949] cation will enable New York Central and Indiana Harbor Belt to participate in the transportation of the substantial volume of traffic outlined in their Application and Return to Questionnaire in Finance Docket No. 19448.

(3) The proposed transaction will promote and provide adequate transportation service to the public as outlined in the applicants' Section 1(18) Application filed in Finance Docket No. 19448 and the Return to Questionnaire therein.

(4) No increase in the fixed charges of the applicants, or of the other parties hereto, will result from the proposed acquisition of trackage rights involved in this application.

(5) It is contemplated that the proposed transaction will afford substantially greater, or at least similar, work opportunities for applicants' employees.

(6) No guarantee or assumption of payments of dividends on fixed charges is contemplated in the proposed transaction and therefore it is "not applicable."

(d) 2 (1) The public interest will not be affected by the failure to include other railroads in the territory involved in the proposed transaction. Reference is made to the Application and questionnaire filed in Finance Docket Nos. 19448, 19538 and 19742.

[fol. 950] (2) Not Applicable.

(d) 3 Not Applicable.

* * * * * * *

[fol. 950a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-A TO APPLICATION

Finance Docket 19921

THIS AGREEMENT, made and entered into as of the 10th day of May, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and INDIANA HARBOR BELT RAILROAD COMPANY, party of the second part, hereinafter called "Harbor",

WITNESSETH:

WHEREAS, Harbor desires to use certain tracks of Pennsylvania hereinafter described, to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and S. Stony Island Avenue, Chicago, Illinois, and Pennsylvania is willing to allow Harbor to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Harbor has entered into other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, under which Harbor has secured trackage rights over tracks owned by other railroads from a point at or near Kensington Junction to a connection with Pennsylvania tracks as covered by this agreement, all in the City of Chicago, Illinois.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Pennsylvania hereby grants to Harbor the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Pennsylvania and such other railroad or railroads as Pennsylvania has admitted or may

hereafter admit to the use thereof, the tracks of Pennsylvania from the junction of such tracks with tracks of the Illinois Central Railroad Company at the north line of E. 130th Street on the west bank of the Calumet River in Chicago, Illinois, to the junction of Pennsylvania's tracks with the tracks owned by the Chicago Regional Port District, all in the City of Chicago.

2. The right herein granted to Harbor to use said tracks of Pennsylvania shall be for the purpose of enabling Harbor to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Harbor shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Pennsylvania. Harbor agrees that it will during the initial five year period of this agreement, use said tracks of Pennsylvania for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressly agreed by and between the parties hereto that Harbor must observe instructions of shippers and connecting railroads as to the routing of cars to and from the [fol. 950b] Chicago Regional Port District but that where Harbor is not under specific routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Harbor to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Harbor is preserved. Harbor's rights under the terms of this agreement will not be affected in any manner in the event Harbor shall not use, exclusively or otherwise, the said tracks of Pennsylvania subsequent to said initial five year period.

Notwithstanding anything else to the contrary contained herein, Harbor shall have the option to allow The Michigan Central Railroad Company or The New York Central Railroad Company to move its freight traffic originating at or destined to any tracks within the Chicago Regional Port District between the said tracks and the Kensington Yard of The Michigan Central Railroad Company. This option shall be in addition to Harbor's right to move its freight traffic in the manner provided elsewhere herein and shall not be deemed to constitute a waiver or modification of any other provision of this contract. In the event Harbor exercises the option contained in this Paragraph 2, The Michigan Central Railroad Company or The New York Central Railroad Company, whichever railroad is elected to handle Harbor traffic, will be considered the agent of Harbor under this agreement and all Harbor traffic so handled will be governed solely by the terms of this agreement, notwithstanding anything else to the contrary contained in other agreements between Pennsylvania and The Michigan Central Railroad Company or The New York Central Railroad Company.

3. Engines, cars and trains of Harbor shall move over the track or tracks designated by Pennsylvania from time to time for such movements. Such tracks shall, at all times, be under the control and management of Pennsylvania's duly authorized representative. Enginemen, trainmen, and other employes of Harbor engaged in and while operating the engines, trains, or cars of Harbor on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Pennsylvania applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of Harbor shall be operated over tracks of Pennsylvania on schedules and in accordance with orders and regulations prescribed by said representative of Pennsylvania from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Harbor.

4. Harbor accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Harbor to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or [fol. 950c] charge being imposed or assessed against Pennsylvania, Harbor shall reimburse and indemnify Pennsylvania for or on account of such fine, penalty, cost or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Pennsylvania account thereof, and Harbor, in event of any such action, upon notice thereof being given by Pennsylvania, shall defend such action free of cost, charge, or expense to Pennsylvania.

5. For the use of said tracks of Pennsylvania, Harbor shall pay to Pennsylvania for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Harbor in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year	$2.50
Per car or diesel engine unit in excess of 7,000 units per year	$1.25

Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 1063]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-A TO APPLICATION

TO I. C. C. LETTER
OF OCT. 4, 1957 (JERSILD)
F. D. NO. 19921

This AGREEMENT made and entered into as of the 10th day of October, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and INDIANA HARBOR BELT RAILROAD COMPANY, party of the second part, hereinafter called "Harbor".

WITNESSETH:

WHEREAS, Pennsylvania and Harbor entered into an agreement dated May 10, 1957, under which Harbor was granted certain trackage rights over tracks of Pennsylvania therein described, to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and south Stony Island Avenue, Chicago, Illinois; and

WHEREAS, Pennsylvania and Harbor desire to change the basis of trackage charges contained therein.

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said track of Pennsylvania, Harbor shall pay to Pennsylvania Two Dollars and Fifty Cents ($2.50) for each loaded car unit and for each diesel engine moved by Harbor in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be

subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of May 10, 1957, shall remain in effect except as herein amended or changed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly au- [fol. 1064] thorized officer the day and year first above mentioned.

THE PENNSYLVANIA RAILROAD COMPANY

By /s/ H. H. PEVLER
Vice President and
Regional Manager

ATTEST:

/s/ G. C. JOHNSON (SEAL)
Assistant Secretary

INDIANA HARBOR BELT RAILROAD COMPANY

By /s/ A. W. LASKOSKE
Vice President & General Manager
A. W. Laskoske

ATTEST:

/s/ CHARLES T. IRELAND, JR.
Secretary
Charles T. Ireland, Jr. (SEAL)

Approved as to form

/s/ M. D. JERSILD
General Counsel

[fol. 1064a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-B TO APPLICATION

Finance Docket 19921

THIS AGREEMENT, made and entered into as of the 10th day of May, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and THE MICHIGAN CENTRAL RAILROAD COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY, parties of the second part, hereinafter collectively called "Michigan".

WITNESSETH:

WHEREAS, Michigan desires to use certain tracks of Pennsylvania hereinafter described to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and S. Stony Island Avenue, Chicago, Illinois, and Pennsylvania is willing to allow Michigan to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Michigan has entered into other agreements, under conditions similar to this agreement, all effective as of the same date as this agreement, under which Michigan has secured trackage rights over tracks owned by other railroads from a point at or near Kensington Junction to a connection with Pennsylvania tracks as covered by this agreement, all in the City of Chicago, Illinois.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Pennsylvania hereby grants to Michigan the right to use jointly for the operation of its engines, cars, and trains (in freight service only) with Pennsylvania and such other

railroad or railroads as Pennsylvania has admitted or may hereafter admit to the use thereof, the tracks of Pennsylvania from junction of such tracks with tracks of the Illinois Central Railroad Company at the north line of E. 130th Street on the west bank of the Calumet River in Chicago, Illinois, to the junction of Pennsylvania's tracks with tracks owned by the Chicago Regional Port District, all in the City of Chicago.

2. The right herein granted to Michigan to use said tracks of Pennsylvania shall be for the purpose of enabling Michigan to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District, or to and from industries served by Michigan in the Lake Calumet District, but under the terms of this agreement, Michigan shall have no [fol. 1064b] right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Pennsylvania within the area of the Chicago Switching District. Michigan agrees that it will, during the initial five year period of this agreement, use said tracks of Pennsylvania exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District. The rights of Michigan under the terms of this agreement will not be affected in any manner in the event Michigan shall not use, exclusively or otherwise, the said tracks of Pennsylvania subsequent to said initial five year period.

3. Engines, cars, and trains of Michigan shall move over the track or tracks designated by Pennsylvania from time to time for such movements. Such tracks shall, at all times, be under the control and management of Pennsylvania's duly authorized representative. Enginemen, trainmen and other employes of Michigan engaged in and while operating the engines, trains, or cars of Michigan on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Pennsylvania ap-

plicable to its own employes engaged in operating its engines, cars and trains. Engines, trains, and cars of Michigan shall be operated over tracks of Pennsylvania on schedules and in accordance with orders and regulations prescribed by said representative of Pennsylvania from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains, and cars of Michigan.

4. Michigan accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Michigan to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost or charge being imposed or assessed against Pennsylvania, Michigan shall reimburse and indemnify Pennsylvania for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Pennsylvania on account thereof, and Michigan, in event of any such action, upon notice thereof being given by Pennsylvania, shall defend such action free of cost, charge, or expense to Pennsylvania.

[fol. 1064c] 5. For use of said tracks of Pennsylvania, Michigan shall pay to Pennsylvania for each car unit (excluding cabooses), loaded or empty, and for each diesel engine unit moved by Michigan in either direction in accordance with the following schedule:

Per car or diesel engine unit up to 7,000 units per year	$2.50
Per car or diesel engine unit in excess of 7,000 units per year	$1.25

Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the

same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 1065]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-B TO APPLICATION

TO I. C. C. LETTER OF
OCT. 4, 1957 (JERSILD)
F. D. NO. 19921

This AGREEMENT made and entered into as of the 10th day of October, 1957, by and between THE PENNSYLVANIA RAILROAD COMPANY, Lessee of the property of The Philadelphia, Baltimore and Washington Railroad Company, party of the first part, hereinafter called "Pennsylvania", and THE MICHIGAN CENTRAL RAILROAD COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY, parties of the second part, hereinafter collectively called "Michigan".

WITNESSETH:

WHEREAS, Pennsylvania and Michigan entered into an agreement dated May 10, 1957, under which Michigan was granted certain trackage rights over tracks of Pennsylvania therein described, to the junction of such tracks with tracks of the Chicago Regional Port District northwest of E. 129th Street and south Stony Island Avenue, Chicago, Illinois; and

WHEREAS, Pennsylvania and Michigan desire to change the basis of trackage charges contained therein.

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

"For use of said track of Pennsylvania, Michigan shall pay to Pennsylvania Two Dollars and Fifty Cents ($2.50) for each loaded car unit and for each diesel engine moved by Michigan in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of May 10, 1957, shall remain in effect except as herein amended or changed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly au- [fol. 1066] thorized officer the day and year first above mentioned.

THE PENNSYLVANIA RAILROAD COMPANY

By /s/ H. H. PEVLER
Vice President and
Regional Manager

ATTEST:

/s/ G. C. JOHNSON
Assistant Secretary

THE MICHIGAN CENTRAL RAILROAD COMPANY

By /s/ D. A. FAWCETT
Vice President

ATTEST:

/s/ R. W. CARROLL
Assistant Secretary

THE NEW YORK CENTRAL RAILROAD COMPANY

By /s/ D. A. FAWCETT
Vice President

ATTEST:

/s/ R. W. CARROLL
Assistant Secretary

Approved as to form

/s/ M. D. JERSILD
General Attorney

[fol. 1066a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-C TO APPLICATION

Finance Docket No. 19921

THIS AGREEMENT, Made and entered into as of the 10th day of May, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," and INDIANA HARBOR BELT RAILROAD COMPANY, party of the second part, hereinafter called "Harbor,"

WITNESSETH:

WHEREAS, Harbor desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company east of Doty Avenue and west of the Calumet River and Central is willing to allow Harbor to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Central and Harbor have entered into another agreement, under conditions similar to this agreement, effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago South Shore and South Bend

Railroad and Central granting Harbor trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with tracks of the Michigan Central Railroad Company near 124th Street to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River, all in the City of Chicago, Illinois.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to Harbor the right to use jointly for the operation of its engines, cars and trains (in freight service only) with Central and such other railroad or railroads as Central has admitted or may hereafter admit to the use thereof, the tracks of Central from the junction of such tracks with Kensington and Eastern Railroad Company's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of The Pennsylvania Railroad Company on the west bank of the Calumet River north of 130th Street, all in the City of Chicago.

[fol. 1066b] 2. The right herein granted to Harbor to use said tracks of Central shall be for the purpose of enabling Harbor to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Harbor shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Central. Harbor agrees that it will, during the initial five year period of this agreement, use said tracks of Central for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressly agreed by and between the parties hereto that Harbor must observe instructions of shippers and connecting railroads as to the routing of cars to and from the Chicago Regional Port District but that where Harbor is not under specific

routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Harbor to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Harbor is preserved. Harbor's rights under the terms of this agreement will not be affected in any manner in the event Harbor shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars and trains of Harbor shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times, be under the control and management of Central's duly authorized representative. Enginemen, trainmen, and other employes of Harbor engaged in and while operating the engines, trains, or cars of Harbor on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains and cars of Harbor shall be operated over tracks of Central on schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders and regulations shall, as nearly as practicable, afford equal rights to the engines, trains and cars of Harbor, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

[fol. 1066c] 4. Harbor accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Harbor to comply with any such laws, rules, regulations, orders, grants or ordinances,

and such failure shall result in any fine, penalty, cost or charge being imposed or assessed against Central, Harbor shall reimburse and indemnify Central for or on account of such fine, penalty, cost or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and Harbor, in event of any such action, upon notice thereof being given by Central, shall defend such action free of cost, charge or expense to Central.

5. For the use of said tracks of Central, Harbor shall pay to Central $0.25 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Harbor in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

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[fol. 1067]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-C TO APPLICATION

TO I.C.C. LETTER
OF OCT. 4, 1957 (JERSILD)
F. D. NO. 19921

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and THE INDIANA HARBOR BELT RAILROAD COMPANY, party of the second part, hereinafter called "Harbor",

WITNESSETH:

WHEREAS, the Central and Harbor entered into an agreement dated May 10, 1957, under which Harbor was granted certain trackage rights over tracks of Central from the junction of such tracks with Kensington and Eastern Rail-

road Company's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of The Pennsylvania Railroad Company on the west bank of the Calumet River north of 130th Street, all in the City of Chicago; and

WHEREAS, Central and Harbor desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said tracks of Central, Harbor shall pay to Central TWENTY FIVE CENTS ($0.25) for each loaded car unit and for each diesel engine unit moved by Harbor in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of May 10, 1957 shall remain in effect except as herein amended or changed.

[fol. 1068] IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

THE INDIANA HARBOR BELT RAILROAD COMPANY

By /s/ A. W. LASKOSKE
Vice President
and General Manager

ATTEST:

/s/ CHARLES T. IRELAND, JR.
Secretary

[fol. 1068a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-D TO APPLICATION

Finance Docket 19921

THIS AGREEMENT, Made and entered into as of the 10th day of May, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," THE INDIANA HARBOR BELT RAILROAD COMPANY, party of the second part, hereinafter called "Harbor," KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington," and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore,"

WITNESSETH:

WHEREAS by agreement dated January 2, 1957, between Kensington, South Shore and Central, Central is granted operating rights for itself and its tenants over tracks and facilities of Kensington and,

WHEREAS Harbor, as a tenant of Central, desires to use certain tracks of Kensington between the junction of Kensington's tracks with those of Central at a point west of Calumet River and south of 130th Street and the junction with tracks of the Michigan Central Railroad Company near 124th Street, all in the City of Chicago, Illinois, and

WHEREAS Central and Harbor have entered into another agreement under conditions similar to this agreement, effective as of the same date as this agreement, briefly described as follows:

1. Agreement between Central and Harbor granting trackage rights over tracks of Central from the junction of Central's tracks with Kensington's tracks east of Doty Avenue to the junction of Central's tracks with tracks of The Pennsylvania Railroad Company on the west bank of the Calumet River at the north side of East 130th Street, all in the City of Chicago.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Kensington, Central and South Shore hereby grant to Harbor the right to use jointly, as a tenant of Central, for the operation of its engines, cars, and trains (in freight service only) with Central and South Shore and such other railroad or railroads as Central and South Shore has admitted or may hereafter admit to the use thereof, the tracks of Kensington from the junction of its tracks with tracks of the Michigan Central Railroad Company near 124th Street to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago.

[fol. 1068b] 2. The right herein granted to Harbor to use said tracks of Kensington shall be for the purpose of enabling Harbor to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Harbor shall have no right to use said tracks to deliver or receive any freight traffic to or from any industry presently or hereafter served exclusively by Central or South Shore. Harbor agrees that it will, during the initial five year period of

this agreement, use said tracks of Kensington for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District, it being expressly agreed by and between the parties hereto that Harbor must observe instructions of shippers and connecting railroads as to the routing of cars to and from the Chicago Regional Port District but that where Harbor is not under specific routing instructions over which it has no control that it will utilize the route described in this agreement with its own motive power for delivering and receiving such business, provided the obligation of the Harbor to afford shippers the protection of the cheapest route when routing instructions or billing are not received by the Harbor is preserved. Harbor's rights under the terms of this agreement will not be affected in any manner in the event Harbor shall not use, exclusively or otherwise, the said tracks of Kensington subsequent to said initial five year period.

3. Engines, cars and trains of Harbor shall move over the track or tracks designated by South Shore from time to time for such movements. Such tracks shall, at all times, be under the control and management of South Shore's duly authorized representative. Enginemen, trainmen and other employes of Harbor engaged in and while operating the engines, trains or cars of Harbor on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of South Shore applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains and cars of Harbor shall be operated over tracks of Kensington at such time or times in accordance with orders and regulations prescribed by said representative of South Shore from time to time. Such orders and regulations shall, as nearly as practicable, afford equal rights to the engines, trains and cars of Harbor, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Harbor accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Harbor to comply with any such laws, rules, regulations, orders, grants or ordinances, and such failure shall result in any fine, penalty, cost or charge being imposed or assessed against Central, South Shore or Kensington, Harbor shall reimburse and indemnify Central, South Shore or Kensington for or on account of such fine, penalty, cost or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central, South Shore or Kensington on account thereof, and Harbor in event of any such action, upon notice thereof being given by Central, South Shore or Kensington, shall defend such action free of cost, charge or expense to Central, South Shore or Kensington.

[fol. 1068c] 5. For the use of said tracks of Kensington, Harbor shall pay to Central $2.00 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Harbor in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * *

[fol. 1069]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-D TO APPLICATION

TO I.C.C. LETTER
OF OCT. 4, 1957 (JERSILD)
F. D. NO. 19921

THIS AGREEMENT, Made and entered into this 10th day of October, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", THE INDIANA HARBOR BELT RAILROAD COMPANY, party of the second part, hereinafter called "Harbor", KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington", and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore",

WITNESSETH:

WHEREAS, Central, Harbor, Kensington and South Shore entered into an agreement date May 10, 1957, under which Harbor was granted certain trackage rights over tracks of Kensington from the junction of Kensington's tracks with tracks of Michigan Central Railroad Company near 124th Street to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago; and

WHEREAS, Central, Harbor, Kensington and South Shore desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said tracks of Kensington, Harbor shall pay to Central Two Dollars ($2.00) for each loaded car unit and for each diesel engine unit moved by Harbor in either direction. No charge shall be made for cabooses. Said rate per car above provided or as here-

after changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of May 10, 1957 shall remain in effect except as herein amended or changed.

[fol. 1070] IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quadruplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By C. H. Mottier
Vice President

ATTEST:

A. L. Church
Secretary

THE INDIANA HARBOR BELT RAILROAD COMPANY

By A. W. Laskoske
Vice President and
General Manager

ATTEST:

Charles T. Ireland, Jr.
Secretary

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD

By Jay Samuel Hartt
President

ATTEST:

Edward H. Bross
Secretary

KENSINGTON AND EASTERN
RAILROAD COMPANY

By O. H. Zimmerman
Vice President

ATTEST:

A. L. Church
Secretary

[fol. 1070a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-E TO APPLICATION

Finance Docket 19921

THIS AGREEMENT, Made and entered into as of the 10th day of May, 1957, by and between the ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and THE MICHIGAN CENTRAL RAILROAD COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY, party of the second part, hereinafter collectively called "Michigan",

WITNESSETH:

WHEREAS, Michigan desires to use certain tracks of Central, hereinafter described to the junction of such tracks with tracks of the Kensington and Eastern Railroad Company east of Doty Avenue and west of the Calumet River and Central is willing to allow Michigan to use said tracks for the purposes and upon the terms and conditions hereinafter set forth:

WHEREAS, Central and Michigan have entered into another agreement, under conditions similar to this agreement, effective as of the same date as this agreement, briefly described as follows:

1. Agreement with the Kensington and Eastern Railroad Company, the Chicago South Shore and South Bend

Railroad and Central granting Michigan trackage rights over tracks of Kensington and Eastern Railroad from the junction of its tracks with tracks of the Michigan Central Railroad Company near 124th Street to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River, all in the City of Chicago, Illinois.

Now, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Central hereby grants to Michigan the right to use jointly for the operation of its engines, cars and trains (in freight service only) with Central and such other railroad or railroads as Central has admitted or may here- [fol. 1070b] after admit to the use thereof, the tracks of Central from the junction of such tracks with Kensington and Eastern Railroad Company's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of Pennsylvania Railroad Company on the west bank of the Calumet River north of 130th Street, all in the City of Chicago.

2. The right herein granted to Michigan to use said tracks of Central shall be for the purpose of enabling Michigan to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Michigan shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Central within the area of the Chicago Switching District. Michigan agrees that it will, during the initial five year period of this agreement, use said tracks of Central exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District. Michigan's rights under the terms of this agreement will not be affected in any manner in the event Michigan

shall not use, exclusively or otherwise, the said tracks of Central subsequent to said initial five year period.

3. Engines, cars and trains of Michigan shall move over the track or tracks designated by Central from time to time for such movements. Such tracks shall, at all times, be under the control and management of Central's duly authorized representative. Enginemen, trainmen, and other employes of Michigan engaged in and while operating the engines, trains or cars of Michigan on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of Central applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains and cars of Michigan shall be operated over tracks of Central on schedules and in accordance with orders and regulations prescribed by said representative of Central from time to time. Such schedules, orders, and regulations shall, as nearly as practicable, afford equal rights to the engines, trains and cars of Michigan, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Michigan accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or [fol. 1070c] which may hereafter become effective. In event of any failure on the part of Michigan to comply with any such laws, rules, regulations, orders, grants or ordinances, and such failure shall result in any fine, penalty, cost or charge being imposed or assessed against Central, Michigan shall reimburse and indemnify Central for or on account of such fine, penalty, cost or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central on account thereof, and Michigan, in event of any such action, upon notice

thereof being given by Central, shall defend such action free of cost, charge or expense to Central.

5. For the use of said tracks of Central, Michigan shall pay to Central $0.25 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Michigan in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

* * * * * * * *

[fol. 1071]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-E TO APPLICATION

TO I.C.C. LETTER
OF OCT. 4, 1957 (JERSILD)
F. D. NO. 19921

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", and THE MICHIGAN CENTRAL RAILROAD COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY, party of the second part, hereinafter collectively called "Michigan",

WITNESSETH:

WHEREAS, the Central and Michigan entered into an agreement dated May 10, 1957, under which Michigan was granted certain trackage rights over tracks of Central from the junction of such tracks with Kensington and Eastern Railroad Company's tracks east of Doty Avenue to the junction of Central's tracks with the tracks of The Pennsylvania Railroad Company on the west bank of the

Calumet River north of 130th Street, all in the City of Chicago; and

WHEREAS, Central and Michigan desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said tracks of Central, Michigan shall pay to Central TWENTY FIVE CENTS ($0.25) for each loaded car unit and for each diesel engine unit moved by Michigan in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of May 10, 1957 shall remain in effect except as herein amended or changed.

[fol. 1072] IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in triplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

THE MICHIGAN CENTRAL RAILROAD COMPANY

By /s/ D. A. FAWCETT
Vice President

ATTEST:

/s/ R. W. Carroll
Secretary

THE NEW YORK CENTRAL RAILROAD COMPANY

By /s/ D. A. Fawcett
Vice President

ATTEST:

/s/ R. W. Carroll
Secretary

[fol. 1072a]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-F TO APPLICATION

Finance Docket 19921

THIS AGREEMENT, Made and entered into as of the 10th day of May, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central," THE MICHIGAN CENTRAL RAILROAD COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY, party of the second part, hereinafter collectively called "Michigan," KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington," and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore,"

WITNESSETH:

WHEREAS by agreement dated January 2, 1957, between Kensington, South Shore and Central, Central is granted

operating rights for itself and its tenants over tracks and facilities of Kensington and,

WHEREAS Michigan, as a tenant of Central, desires to use certain tracks of Kensington between the junction of Kensington's tracks with those of Central at a point west of Calumet River and south of 130th Street the junction with tracks of the Michigan Central Railroad Company near 124th Street, all in the City of Chicago, Illinois, and

WHEREAS Central and Michigan have entered into another agreement, under conditions similar to this agreement, effective as of the same date as this agreement, briefly described as follows:

1. Agreement between Central and Michigan granting the latter trackage rights over tracks of Central from the junction of Central's tracks with Kensington's tracks east of Doty Avenue to the junction of Central's tracks with tracks of Pennsylvania on the west bank of the Calumet River at the north side of East 130th Street, all in the City of Chicago.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed between the parties hereto as follows:

1. Kensington, Central and South Shore hereby grant to Michigan the right to use jointly, as a tenant of Central, for the operation of its engines, cars and trains (in freight service only) with Central and South Shore and such other railroad or railroads as Central and South Shore has admitted or may hereafter admit to the use thereof, the tracks of Kensington from the junction of its tracks with tracks of the Michigan Central Railroad Company near 124th Street to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago.

[fol. 1072b] 2. The right herein granted to Michigan to use said tracks of Kensington shall be for the purpose of

enabling Michigan to deliver and receive its freight traffic moving in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Chicago Regional Port District but, under the terms of this agreement, Michigan shall have no right to deliver or receive any freight traffic to or from any industry which is presently or hereafter served solely by Central or South Shore within the area of the Chicago Switching District. Michigan agrees that it will, during the initial five year period of this agreement, use said tracks of Kensington exclusively for handling all of its freight in this Section 2 defined originating at or destined to any tracks within the Chicago Regional Port District. Michigan's rights under the terms of this agreement will not be affected in any manner in the event Michigan shall not use, exclusively or otherwise, the said tracks of Kensington subsequent to said initial five year period.

3. Engines, cars and trains of Michigan shall move over the track or tracks designated by South Shore from time to time for such movements. Such tracks shall, at all times, be under the control and management of South Shore's duly authorized representative. Enginemen, trainmen and other employes of Michigan engaged in and while operating the engines, trains or cars of Michigan on and over said tracks shall be subject to and pass satisfactory examination on all rules and regulations of South Shore applicable to its own employes engaged in operating its engines, cars and trains. Engines, trains and cars of Michigan shall be operated over tracks of Kensington at such time or times in accordance with orders and regulations prescribed by said representative of South Shore from time to time. Such orders and regulations shall, as nearly as practicable, afford equal rights to the engines, trains and cars of Michigan, except that passenger trains shall, at all times, have preference over freight trains in the use of any tracks over which both passenger and freight trains may be operated.

4. Michigan accepts the rights and privileges herein granted subject to all applicable federal and state laws, all applicable rules, regulations, or orders promulgated by any Board or Commission having jurisdiction, and all applicable municipal grants or ordinances now in effect, or which may hereafter become effective. In event of any failure on the part of Michigan to comply with any such laws, rules, regulations, orders, grants, or ordinances, and such failure shall result in any fine, penalty, cost, or charge being imposed or assessed against Central, South Shore or Kensington, Michigan shall reimburse and indemnify Central, South Shore or Kensington for or on account of such fine, penalty, cost, or charge, and all expense and attorneys' fees incurred in defending any action which may be brought against Central, South Shore or Kensington on account thereof, and Michigan, in event of any such action, upon notice thereof being given by Central, South Shore or Kensington, shall defend such action free of cost, charge, or expense to Central, South Shore or Kensington.

[fol. 1072c] 5. For the use of said tracks of Kensington, Michigan shall pay to Central $2.00 for each car unit, loaded or empty (excluding cabooses), and for each diesel engine unit moved by Michigan in either direction. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased.

• • • • • • •

[fol. 1073]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT 7-F TO APPLICATION

TO I.C.C. LETTER
OF OCT. 4, 1957 (JERSILD)
F. D. NO. 19921

THIS AGREEMENT, Made and entered into as of the 10th day of October, 1957, by and between ILLINOIS CENTRAL RAILROAD COMPANY, party of the first part, hereinafter called "Central", THE MICHIGAN CENTRAL RAILROAD COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY, party of the second part, hereinafter collectively called "Michigan", KENSINGTON AND EASTERN RAILROAD COMPANY, party of the third part, hereinafter called "Kensington", and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, party of the fourth part, hereinafter called "South Shore",

WITNESSETH:

WHEREAS, the Central, Michigan, Kensington and South Shore entered into an agreement dated May 10, 1957, under which Michigan was granted certain trackage rights over tracks of Kensington from the junction of its tracks with tracks of the Michigan Central Railroad Company near 124th Street to the junction of its tracks with Central's tracks east of Doty Avenue and west of the Calumet River in the City of Chicago; and

WHEREAS, Central, Michigan, Kensington and South Shore desire to change the basis of trackage charges contained therein;

NOW, THEREFORE, it is mutually agreed that:

1. Section 5 of said agreement shall be deleted and the following substituted therefor:

> "For use of said tracks of Kensington, Michigan shall pay to Central Two Dollars ($2.00) for each loaded car unit and for each diesel engine unit moved

by Michigan in either direction. No charge shall be made for cabooses. Said rate per car above provided or as hereafter changed shall be subject to increase or decrease effective as of the same date and by the same percentage that interstate switching rates on grain in the Chicago Switching District shall be increased or decreased."

2. Section 6 of said agreement shall be changed by inserting the word "loaded" before the word "cars" in the second and fifth lines.

3. All other terms of said agreement of May 10, 1957 shall remain in effect except as hereby amended or changed.

[fol. 1074] IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quintuplicate by their duly authorized officers the day and year first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By /s/ C. H. MOTTIER
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

THE MICHIGAN CENTRAL
RAILROAD COMPANY

By /s/ D. A. FAWCETT
Vice President

ATTEST:

/s/ R. N. CARROLL
Secretary

THE NEW YORK CENTRAL
RAILROAD COMPANY

By /s/ D. A. Fawcett
Vice President

ATTEST:

/s/ R. N. CARROLL
Secretary

CHICAGO SOUTH SHORE AND
SOUTH BEND RAILROAD

By /s/ JAY SAMUEL HARTT
President

ATTEST:

/s/ EDWARD H. BROSS
Secretary

KENSINGTON AND
EASTERN RAILROAD COMPANY

By /s/ O. H. ZIMMERMAN
Vice President

ATTEST:

/s/ A. L. CHURCH
Secretary

[fol. 1076]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19921

In the Matter of the Application of the MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority Under Section 5(2) of the Interstate Commerce Act to Acquire Trackage Rights on Behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY Over the Lines of Railroad Owned or Operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

PETITION OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY FOR LEAVE TO INTERVENE—September 10, 1957

Comes now your petitioner, The New York, Chicago and St. Louis Railroad Company, hereinafter called "Petitioner" or "Nickel Plate", and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of said intervention, says:

I.

Petitioner is a consolidated railroad corporation created and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana, and Illinois, having its principal office and place of business in Terminal Tower, Cleveland, Ohio. Petitioner is a common carrier by railroad engaged in the transportation of persons and property from, to, and between points in the States of New York, Pennsylvania, Ohio, Indiana, Illinois, and Missouri. Peti-

tioner's main lines extend west from Buffalo, New York, and Terminal Junction, Ohio, through Cleveland, Ohio to Toledo, Ohio, Indianapolis, Indiana, Chicago and Peoria, Illinois, and St. Louis, Missouri.

[fol. 1077] II.

Petitioner's railroad parallels the east side of Lake Calumet and is the nearest line of railroad to said Lake Calumet on both the east and northeast sides thereof. The Chicago, Rock Island and Pacific and Pullman Railroad Companies own and operate the nearest lines of railroad to said Lake Calumet on the south, west, and northwest sides thereof.

III.

Petitioner opposes the application as an unjustifiable invasion of the Lake Calumet area which is now and will continue to be adequately and completely served, under both present and future development, by petitioner and Chicago, Rock Island and Pacific and Pullman Railroad Companies. There is no valid reason in law or fact for the extension of the line of railroad described in the application into the area exclusively served by said petitioner and said Chicago, Rock Island and Pacific and Pullman Railroad Companies.

IV.

Nickel Plate has heretofore been authorized to intervene in opposition to the application in Finance Docket No. 19448 filed by the applicants herein. Nickel Plate has also been authorized to intervene in opposition to the applications in Finance Docket Nos. 19538 and 19742 involving the construction and use of the same tracks.

Wherefore, said The New York, Chicago and St. Louis Railroad Company prays leave to intervene and be treated as a party hereto with a right to have notice of and appear at the taking of testimony, produce and cross-examine wit-

nesses, and be heard in person or by counsel upon brief and at the oral argument if oral argument is granted.

Respectfully submitted,

Eugene M. Smith, Thomas O. Broker, Counsel for The New York, Chicago and St. Louis Railroad Company.

Dated: September 10, 1957

[fol. 1078] Certificate of Service (omitted in printing).

[fol. 1080]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19921

In the Matter of the Application of the MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority Under Section 5(2) of the Interstate Commerce Act to Acquire Trackage Rights on Behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY Over the Lines of Railroad Owned or Operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

MOTION TO DISMISS FOR LACK OF JURISDICTION—
September 10, 1957

Comes now The New York, Chicago and St. Louis Railroad Company (hereinafter called "Nickel Plate") and respectfully requests dismissal by the Interstate Commerce Commission for lack of jurisdiction under Section 5(2)

of the Interstate Commerce Act, of the application of the Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor Belt Railroad Company under Section 5(2) of said Act for trackage rights over lines of railroad proposed to be constructed to serve the Lake Calumet Harbor District, Chicago, Ill.

I.

The application herein requests approval and authorization under Section 5(2) of the Interstate Commerce Act of trackage rights over the following segments of track which the applicants in Finance Docket No. 19538 seek authority to construct:

1. Lead track 2,900 feet in length proposed to be constructed by the Kensington & Eastern Railroad Company from tracks owned by it and used by The Chicago South Shore & South Bend Railroad.

[fol. 1081] 2. Further extension of 630 feet proposed to be constructed by Illinois Central.

3. Further extension of 4030 feet proposed to be constructed by Pennsylvania Railroad Company in behalf of The Philadelphia, Baltimore and Washington Railroad Company.

II.

The text of the motion filed by Chicago, Rock Island and Pacific Railroad Company and Nickel Plate to dismiss for lack of jurisdiction filed in Finance Docket Nos. 19538 and 19742, served on all parties including the applicants herein, is incorporated herein by reference. The substance of the motion is that the Interstate Commerce Commission does not have jurisdiction under Section 5(2) of the Interstate Commerce Act to approve and authorize trackage rights over tracks which do not exist. Section 5(2) relates only to tracks "owned or operated" by a railroad carrier, not tracks proposed to be constructed in the future as in the

situation here. On the other hand, the rules applicable to Section 1(18) applications clearly relate to a line of railroad not at the time owned or being operated by a common carrier (49 C.F.R. §41.1(d)).

Wherefore it is respectfully requested that the portion of the application filed herein be dismissed for lack of jurisdiction under Section 5(2) of the Interstate Commerce Act insofar as it relates to trackage rights over tracks or lines of railroad which have not yet been constructed.

Respectfully submitted,

Eugene M. Smith, Thomas O. Broker, Counsel for The New York, Chicago and St. Louis Railroad Company.

Dated: September 10, 1957

[fol. 1082] Certificate of Service (omitted in printing).

[fol. 1085]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19921

In the Matter of the Application of the MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority Under Section 5(2) of the Interstate Commerce Act to Acquire Trackage Rights on Behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY Over the Lines of Railroad Owned or Operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

MOTION TO DISMISS FOR LACK OF JURISDICTION
—September 13, 1957

Comes now Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company and respectfully requests dismissal by the Interstate Commerce Commission for lack of jurisdiction under Section 5(2) of the Interstate Commerce Act, of the application of The Michigan Central Railroad Company, the New York Central Railroad Company and Indiana Harbor Belt Railroad Company under Section 5(2) of said Act for trackage rights over lines of railroad proposed to be constructed to serve the Lake [fol. 1086] Calumet Harbor District, Chicago, Ill.

I.

The application herein requests approval and authorization under Section 5(2) of the Interstate Commerce Act of trackage rights over the following segments of track which the applicants in Finance Docket No. 19538 seek authority to construct:

1. Lead track 2,900 feet in length proposed to be constructed by the Kensington & Eastern Railroad Company from tracks owned by it and used by The Chicago South Shore & South Bend Railroad.

2. Further extension of 630 feet proposed to be constructed by Illinois Central.

3. Further extension of 4030 feet proposed to be constructed by Pennsylvania Railroad Company in behalf of The Philadelphia, Baltimore and Washington Railroad Company.

II.

The text of the motion to dismiss for lack of jurisdiction filed by interveners in opposition in Finance Dockets Nos. 19538 and 19742 and served on all parties including the

applicants is incorporated herein by reference. The substance of the motion is that the Interstate Commerce Commission does not have jurisdiction under Section 5(2) of [fol. 1087] the Interstate Commerce Act to approve and authorize trackage rights over tracks which do not exist. Section 5(2) relates only to tracks "owned or operated" by a railroad carrier, not tracks proposed to be constructed in the future as is the situation here. On the other hand, the rules applicable to Section 1(18) applications clearly relate to a line of railroad not at the time owned or being operated by a common carrier (49 C.F.R. §41.1(d)).

Wherefore, it is respectfully requested that the portion of the application filed herein be dismissed for lack of jurisdiction under Section 5(2) of the Interstate Commerce Act insofar as it relates to trackage rights over tracks or lines of railroad which have not yet been constructed.

Respectfully submitted,

Bruce Dwinell, Thomas I. Megan, John Guandolo,
139 W. Van Buren Street, Chicago 5, Illinois;

Joseph B. Fleming, John Bordes, Prudential Plaza,
130 E. Randolph Drive, Chicago 1, Illinois,

Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 E. Randolph Drive, Chicago 1, Illinois, Of Counsel.

September 13, 1957

[fol. 1088] Certificate of Service (omitted in printing).

[fol. 1090]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19921

In the Matter of the Application of the MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority under Section 5(2) of the Interstate Commerce Act to acquire trackage rights on behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY over the lines of railroad owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD and the PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY FOR LEAVE TO INTERVENE—September 13, 1957

Come now your petitioners, Chicago, Rock Island and Pacific Railroad Company (hereinafter sometimes referred to as "Rock Island") and Pullman Railroad Company (hereinafter sometimes referred to as "Pullman"), and respectfully represent that they have an interest in the matters involved in the above-entitled proceeding and desire to intervene in and become parties to said proceeding, and for grounds of the proposed intervention say:

[fol. 1091] I.

Petitioner, Chicago, Rock Island and Pacific Railroad Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, is admitted to do business under the laws of the State of Illinois

and is a common carrier by railroad engaged in the interstate transportation of freight and passengers in and through the State of Illinois and many other states.

Petitioner, Pullman Railroad Company, is a railroad corporation organized and existing under and by virtue of the laws of the State of Illinois. All the capital stock of Pullman was acquired by Rock Island under authority granted by the Commission on November 17, 1949 in F. D. No. 16252, Pullman Railroad Company Control, etc., at which time the Commission also approved Rock Island's operation of the Pullman properties under lease the term of which has been extended to 1965 by authority of the Commission granted on January 20, 1955. The railroad properties of the Pullman, including operating rights, consist, among others, of a line of railroad extending from a connection with the line of the Rock Island at or near the intersection of 95th Street and Stony Island Avenue, Chicago, Illinois, to points on the shore of Lake Calumet, including the Chicago Regional Port District, a distance of between [fol. 1092] four and five miles, together with various yard, side, spur and industrial tracks and their appurtenances. These properties and rights of Pullman, by virtue of the above referred to agreement, have been integrated into Rock Island's system operations.

II.

By application filed in this proceeding under Section 5(2) of the Interstate Commerce Act, applicants seek to acquire trackage rights for the purpose of extending their lines of railroad and operations to serve the Chicago Regional Port District which is located adjacent to petitioners' railroad tracks and is being served by them exclusively. The sole underlying purpose of applicants in extending their lines of railroad and operations through trackage rights to serve the Chicago Regional Port District is to divert to their lines traffic handled by petitioners.

III.

Petitioners oppose the applications filed under Section 5(2) of the Act on the grounds, among others, that they are serving and will continue to serve, adequately the Chicago Regional Port District; that they have expended large sums of money in the construction of facilities to serve [fol. 1093] said Chicago Regional Port District adequately; that they propose and are prepared to expend further sums of money to keep themselves in a position to serve said Chicago Regional Port District adequately; that they are capable of performing adequate service in the future to meet the rail transportation needs of the Chicago Regional Port District; that they are entitled to retain the rail traffic of the Chicago Regional Port District; that there is no reason sufficient in law for applicants extension of their lines of railroad and operations through trackage rights to serve territory heretofore served exclusively and adequately by petitioners; and that applicants extension of their lines of railroad and operations through trackage rights to serve territory heretofore served exclusively and adequately by petitioners cannot be supported by public convenience and necessity, could mean only a duplication of rail service, and would create unsound and uneconomic conditions in transportation.

IV.

Petitioners heretofore have been permitted to intervene and be treated as parties in related cases, Finance Docket Nos. 19448, 19538, 19742, upon a showing of interest sufficient to warrant intervention.

[fol. 1094] Wherefore, Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company pray leave to intervene and be treated as parties hereto with the right to have notice and appear at the taking of testimony, produce and cross-examine witnesses and be heard by counsel upon brief and oral argument, if oral argument is granted.

Dated at Chicago, Illinois this 13th day of September, 1957.

Bruce Dwinell, Thomas I. Megan, John Guandolo,
139 W. Van Buren Street, Chicago 5, Illinois;

Joseph B. Fleming, John Bordes, Prudential Plaza,
130 E. Randolph Drive, Chicago 1, Illinois;
Counsel for Petitioners.

Kirkland, Fleming, Green, Martin & Ellis, Prudential Plaza, 130 East Randolph Drive, Chicago 1, Illinois, Of Counsel.

[fol. 1095] Certificate of Service (omitted in printing).

[fol. 1098]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY, et al.

Trackage Rights

ORDER ALLOWING ROCK ISLAND PULLMAN AND NICKEL PLATE LEAVE TO INTERVENE—September 18, 1957

In the Matter of Petitions for Leave to Intervene in Opposition to the Application.

Present: Richard F. Mitchell, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That on September 9, 1957, an application was filed by The Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor

Belt Railroad Company for authority to acquire trackage rights on behalf of The New York Central Railroad Company and Indiana Harbor Belt Railroad Company over a portion of the lines of railroad of Illinois Central Railroad Company, Kensington and Eastern Railroad Company and The Pennsylvania Railroad Company, as are now existing or to be constructed, in the Lake Calumet Harbor District, Chicago, Ill.;

It further appearing, That the New York, Chicago, and St. Louis Railroad Company by petition dated September 12, 1957, and the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company by joint petition dated September 16, 1957, have requested leave to intervene in opposition alleging that they are now and will continue to adequately serve the Lake Calumet Harbor Area and that service by applicants in the area would constitute a diversion of traffic and an unjustifiable invasion of the territory served by petitioners;

And it further appearing, That the petitioners have shown an interest in the proceeding sufficient to warrant intervention;

It is ordered, That said Chicago, Rock Island and Pacific Railroad Company, the Pullman Railroad Company and the New York, Chicago and St. Louis Railroad Company be, and they are hereby, permitted to intervene and be treated as parties to this proceeding;

It is further ordered, That a copy of this order be served upon the Governor and public regulatory commission of the State of Illinois, and each of the parties to this proceeding.

Dated at Washington, D. C., this 18th day of September, A. D. 1957.

By the Commission, Commissioner Mitchell.

Harold D. McCoy, Secretary.

(Seal)

[fol. 1107]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

Application of THE ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA BALTIMORE AND WASHINGTON RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY for Authority to construct and operate connection tracks from a point near Doty Avenue, Chicago, to the Lake Calumet Harbor Port of Chicago, in Cook County, Illinois, and for Authority of the First and Last named company and THE CHICAGO, SOUTH SHORE and SOUTH BEND RAILROAD to acquire Trackage Rights over the proposed and certain existing tracks.

Finance Docket No. 19742

Application of THE BELT RAILWAY COMPANY OF CHICAGO for Authority to acquire Trackage Rights over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, Illinois, owned, operated, or to be constructed by ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

REPLY TO, AND MOTION TO STRIKE, MOTION TO DISMISS FOR LACK OF JURISDICTION—September 24, 1957

Come now Illinois Central Railroad Company, The Pennsylvania Railroad Company, Chicago, South Shore and South Bend Railroad, The Belt Railway Company of Chicago, hereinafter called applicants, and in reply to the motion to dismiss filed in these proceedings by The New York, Chicago and St. Louis Railroad Company and the Chicago, [fol. 1108] Rock Island and Pacific Railroad Company, hereinafter called interveners.

I.

The motion to dismiss the applications in these proceedings for lack of jurisdiction under Section 5(2) of the Interstate Commerce Act, insofar as trackage rights over track to be constructed under that portion of the application under Section 1(18) of the application in Finance Docket No. 19538 is wholly without substance, is impertinent and frivolous, and applicants move that such motion be stricken under Rule 4(d).

II.

The complete lack of substance in interveners' position is demonstrated by the many applications approved by the Commission seeking just such authority as sought here. *New Orleans Union Passenger Terminal* Case, 267 I.C.C. 760, 783, 786-7, and *Chicago, Burlington & Quincy Control,* 127 I.C.C. 63; *Chicago, B. & Q. R. Co. Abandonment,* 261 I.C.C. 549; *Arkansas & L. M. Ry. Co. Construction,* 290 I.C.C. 112, are just a few of such cases. In the *Burlington Case,* 271 I.C.C. 63, the question of jurisdiction under Section 1(18) as opposite to Section 5(2) was specifically raised, including the operation over tracks to be constructed. This Commission specifically held that application in that case under Section 5(2) was all that was necessary.

[fol. 1109] The *Arkansas & L. M. R. Co. case, supra,* is subsequent to the *International-G.N.R. Co. case* cited by interveners and clearly shows that the Commission has not interpreted Section 5(2) in the manner suggested by interveners. The *International-G. N. R. Co. case* is no broader than the facts therein and does not purport to pass on any jurisdictional matter not there involved.

Interveners wholly misconstrue the intent of this Commission's rules covering applications under Section 1(18). The rule requirement is that applicant state:

(1) Whether it is proposed to construct a new line of railroad or an extension of an existing line of railroad, or

(2) To acquire and operate a line of railroad not at the time owned or being operated by a common carrier.

Note: If the line to be acquired or operated is one for the abandonment of which permission has been granted, Sec. 1(18)-(20) applies; the application shall state the facts.

Therefore, it is obvious that the only carrier to apply in the case of new construction is the one proposing to do the constructing. Only one certificate would or should be granted. If the railroad lines are in existence and are not presently owned or operated by a common carrier, that is, by an industry or by a former common carrier who has been granted the right to abandon operations, then Sections 1(18) and 1(20) apply. No further interference can be drawn from the language used.

[fol. 1110] Further, it is obvious that the interveners' motion is no more than a plea in abatement, and this Commission has never entertained such motions.

Wherefore, applicants pray that the motion to dismiss the applications be stricken from the record, or, in the alternative, denied.

Respectfully submitted,

Erle J. Zoll, Jr., Robert H. Bierma, John C. Lawyer, Harvard R. Osmond, Franklin C. Gagen, Frank F. Vesper, 332 South Michigan Avenue, Chicago 4, Illinois, Attorneys for Applicants.

Dated: September 24, 1957.

[fol. 1111] Certificate of Service (omitted in printing).

[fol. 1114]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19921

Application of THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority under Section 5(2) of the Interstate Commerce Act to acquire Trackage Rights on behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY over the lines of railroad owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

REPLY TO, AND MOTION TO STRIKE, MOTION TO DISMISS FOR LACK OF JURISDICTION—September 30, 1957

Come now The Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor Belt Railroad Company, hereinafter called applicants, and in reply to the motion to dismiss filed in these proceedings by The New York, Chicago and St. Louis Railroad Company and the Chicago, Rock Island and Pacific Railroad Company, hereinafter called interveners.

I.

The motion to dismiss the application in this proceeding for lack of jurisdiction under Section 5(2) of the Interstate Commerce Act, insofar as trackage rights over tracks [fol. 1115] to be constructed under certain other applications under Section 1(18), now before this Commission, is wholly without substance, is impertinent and frivolous, and applicants move that such motion be stricken under Rule 4(d).

II.

The complete lack of substance in interveners' position is demonstrated by the many applications approved by the Commission seeking just such authority as sought here. *New Orleans Union Passenger Terminal* Case, 267 I.C.C. 760, 783, 786-7, and *Chicago, Burlington & Quincy Control,* 271 I.C.C. 63; *Chicago, B. & Q. R. Co. Abandonment,* 261 I.C.C. 549; *Arkansas & L. M. Ry. Co. Construction,* 290 I.C.C. 112, are just a few of such cases. In the *Burlington Case,* 271 I.C.C. 63, the question of jurisdiction under Section 1(18) as opposite to Section 5(2) was specifically raised, including the operation over tracks to be constructed. This Commission specifically held that application in that case under Section 5(2) was all that was necessary.

The *Arkansas & L. M. R. Co. case, supra,* is subsequent to the *International-G.N.R. Co. case* cited by interveners and clearly shows that the Commission has not interpreted Section 5(2) in the manner suggested by interveners. The *International-G.N.R. Co. case* is no broader than the facts [fol. 1116] therein and does not purport to pass on any jurisdictional matter not there involved.

Interveners wholly misconstrue the intent of this Commission's rules covering applications under Section 1(18). The rule requirement is that applicant state:

(1) Whether it is proposed to construct a new line of railroad or an extension of an existing line of railroad, or

(2) To acquire and operate a line of railroad not at the time owned or being operated by a common carrier.

Note: If the line to be acquired or operated is one for the abandonment of which permission has been granted, Sec. 1(18)-(20) applies; the application shall state the facts.

Therefore, it is obvious that the only carrier to apply in the case of new construction is the one proposing to do

the constructing. Only one certificate would or should be granted. If the railroad lines are in existence and are not presently owned or operated by a common carrier, that is, by an industry or by a former common carrier who has been granted the right to abandon operations, then Sections 1(18) and 1(20) apply. No further inference can be drawn from the language used.

Further, it is obvious that the interveners' motion is no more than a plea in abatement, and this Commission has never entertained such motions.

[fol. 1117] Wherefore, applicants pray that the motion to dismiss the application be stricken from the record, or in the alternative, denied.

Respectfully submitted,

Marvin A. Jersild, Richard O. Olson, Martin J. Keating, 1236 LaSalle Street Station, Chicago 5, Illinois, Attorneys for Applicants.

Dated: September 30, 1957.

[fol. 1118] Certificate of Service (omitted in printing).

[fol. 1127]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

Application of THE ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY for Authority to construct and operate connection tracks from a point near Doty Avenue, Chicago, to the Lake Calumet Harbor Port of Chicago, in Cook County, Illinois, and for Authority of the First and Last named company and THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD to acquire Trackage Rights over the proposed and certain existing tracks.

Finance Docket No. 19742

Application of THE BELT RAILWAY COMPANY OF CHICAGO for Authority to acquire Trackage Rights over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, Illinois, owned, operated, or to be constructed by ILLINOIS CENTRAL RAILROAD COMPANY, THE KENSINGTON AND EASTERN RAILROAD COMPANY, THE CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, and THE PENNSYLVANIA RAILROAD COMPANY.

Finance Docket No. 19921

Application of THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority under Section 5(2) of the Interstate Commerce Act to acquire Trackage Rights on behalf of THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY over the lines of railroad owned or operated by ILLINOIS CENTRAL RAILROAD COMPANY, KENSINGTON & EASTERN RAILROAD COMPANY, CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY, in the City of Chicago, County of Cook, State of Illinois.

REPLY TO MOTION OF APPLICANTS TO STRIKE MOTION OF NICKEL PLATE AND ROCK ISLAND TO DISMISS APPLICATIONS FOR LACK OF JURISDICTION—October 10, 1957

Come now The New York, Chicago and St. Louis Railroad Company (Nickel Plate), and Chicago, Rock Island and Pacific Railroad Company (Rock Island), interveners herein, and respectfully file this reply to the motions of the applicants in above proceedings to strike said interveners' motion to dismiss the applications for lack of jurisdiction.

I.

The motion of Nickel Plate and Rock Island to dismiss portions of the applications in these proceedings is based [fol. 1128] on provisions of Section 5(2)(a)(ii) of the Interstate Commerce Act which states:

> "2(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

"(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines *owned or operated* by any other such carrier, and terminals incidental thereto." (Emphasis supplied.)

In these proceedings the applicants seek approval of trackage rights over certain tracks which are proposed to be constructed, and since the tracks do not exist, are not owned or operated by a carrier. In support of their motion interveners cited *International-G.N.R. Co. Trustee Trackage Rights,* 275 I.C.C. 27 (1949) stating in part:

> *"Inasmuch as the transaction proposed relates to operation by the applicant over a track already in place and operated by another carrier it is governed by section 5(2) of the act and not by section 1(18)"* (pp. 32-33). (Emphasis supplied.)

The motions of the applicants to strike allege that the motion of interveners is frivolous and impertinent and is no more than a plea in abatement. These interveners deny the charges of frivolity and impertinence and assert that the Commission has entertained motions to dismiss for lack of jurisdiction, even going to such length as to hold a hearing solely devoted to jurisdictional question. See *New York, C. & St. L. R. Co. Control,* 295 I.C.C. 131, pp. 133-134. As a creature of statute, the Commission is bound to its specifically delegated authority and must act within the scope of its jurisdiction.

II.

The motions to strike also allege a lack of substance in the motion to dismiss, citing various decisions of the Commission, as follows:

New Orleans Union Passenger Terminal Case, 267 I.C.C. 760. Not only was there no invasion of new territory involved, but the question of jurisdiction was not raised.

[fol. 1129] *Chicago, B. & Q. R. Co. Abandonment,* 261 I.C.C. 549. This proceeding did not involve trackage rights over tracks for which Section 1(18) authority was sought.

Arkansas & L. M. Ry. Co. Construction, 290 I.C.C. 112. The report states there was no opposition to the application, and the jurisdictional question was not involved.

Only in *International-G.N.R. Co., supra,* was the jurisdictional question discussed and the report of the Commission supports interveners' motion to dismiss.

III.

The applicants' motions to strike also seek to construe the rules set forth in 49 C.F.R. Sec. 41.1(d), stating:

> "Whether it is proposed (1) to construct a new line of railroad or an extension of an existing line of railroad, or (2) to acquire and operate, or to operate, a line of railroad not at the time owned or being operated by a common carrier.
>
> "Note: If the line to be acquired or operated is one for the abandonment of which permission has been granted, section 1(18)-(20) of the act applies; the application should state the facts."

They construe the note as a limitation on the necessity for filing a Section 1(18) application when it is proposed to operate a line of railroad not at the time owned or operated by a common carrier. In fact, the note is an exception to the previous rule and not a limitation, for if carrier A seeks to operate over a line which carrier B has been authorized to abandon, it is in fact seeking authority to operate over a line owned by another carrier, a situation ordinarily encompassed by Section 5(2) of the Act. Section 5(2) relates, therefore, to going and used railroad facilities, whereas Section 1(18) covers operations over tracks which cannot be so characterized.

[fol. 1130] The motions to strike cannot, therefore, be supported particularly in view of the applicant-movants' failure to analyze the provisions of Section 5(2)(a)(ii) or its legislative history.

Respectfully submitted,

Bruce Dwinell, Thomas I. Megan, John Guandolo, 139 W. Van Buren Street, Chicago 5, Illinois;

Joseph B. Fleming, John L. Bordes, 130 E. Randolph Drive, Chicago 1, Illinois;

Counsel for Chicago, Rock Island and Pacific Railroad Company.

E. M. Smith, T. O. Broker, P. O. Box 6119, Cleveland 1, Ohio;

Counsel for The New York, Chicago and St. Louis Railroad Company.

Dated: October 10, 1957.

Certificate of Service (omitted in printing).

[fol. 2301]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538[1]

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

PROPOSED REPORT—Served July 21, 1958

Recommended that division 4 overrule the motions of interveners in opposition to dismiss the applications for want of jurisdiction; and find

1. That the present and future public convenience and necessity require construction by the Illinois Central Railroad Company, the Kensington & Eastern Railroad Company, the Philadelphia, Baltimore & Washington Railroad Company, and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill.; and that acquisition of trackage rights by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and the Chicago South Shore & South Bend Railroad over the line to be constructed and certain existing tracks will be consistent with the public interest. Conditions recommended.

2. That acquisition of trackage rights by the Belt Railway Company of Chicago over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned, operated, or to be constructed by the Illinois Central Railroad

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[1] This report also embraces Finance Docket No. 19448, Michigan Central Railroad Company, Et Al., Construction, Etc.; Finance Docket No. 19742, Belt Railway Company of Chicago Trackage Rights, Etc.; and Finance Docket No. 19921, Michigan Central Railroad Company, Et Al., Trackage Rights.

Company, the Kensington & Eastern Railroad Company, the Chicago South Shore & South Bend Railroad, and The Pennsylvania Railroad Company will be consistent with the public interest. Conditions recommended.

3. That acquisition of trackage rights by the Michigan Central Railroad Company, the New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned or operated by the Illinois Central Railroad Company, the Kensington & Eastern Railroad Company, the Chicago South Shore & South Bend Railroad, and The Pennsylvania Railroad Company will be consistent with the public interest. Conditions recommended.

Further recommended that the application of the Michigan Central Railroad Company, the New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company for authority to construct and operate a line of railroad from 126th Street, Chicago, to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., Finance Docket No. 19448, be dismissed.

[fol. 2302] William J. O'Brien, Jr., Joseph H. Wright, Robert H. Bierma, Richard A. Olson, Martin J. Keating, Edmund A. Schroer, Frank F. Vesper, Richard T. Cubbage, E. E. Boyner, F. C. Gagen, Robert H. Pratt, Floyd Stuppi, John B. Goodrich, and Eugene S. Davis for applicants.

Leonard M. Shinn for the Secretary of Agriculture of the United States, and the United States Department of Agriculture, interveners in support of the applications.

Joseph M. Arnold, John S. Burchmore, A. J. Maurer, A. H. Schwietert, J. S. Chartrand and R. D. Erickson for other interveners in support of the applications.

Bruce Dwinell, John L. Bordes, John Guandolo and Thomas O. Broker for railroad interveners in opposition.

Report Proposed by Paul C. Albus, Hearing Examiner

These proceedings involve the efforts of six operating railroads, subject to the provisions of Part I of the Interstate Commerce Act, hereinafter called the act, to provide additional rail service to the Lake Calumet Harbor Port at Chicago, Ill., now served exclusively by the Pullman division of the Chicago, Rock Island & Pacific Railroad Company (Rock Island).[2]

By application filed October 22, 1956, and recorded in Finance Docket No. 19538, the Kensington and Eastern Railroad Company,[3] the Illinois Central Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company and The Pennsylvania Railroad Company applied under section 1(18) of the act, for authority to construct a line of railroad, approximately 1.431 miles, in Cook County, Ill. The initial segment of 2,900 feet, or 0.549 mile, would be constructed by the Kensington & Eastern at an estimated cost of $222,596; the next 630 feet, or 0.119 mile, would be built by the Illinois Central at an estimated cost of $35,886; and the final 4,030 feet, or 0.763 mile, would be constructed by the Pennsylvania in behalf of the Philadelphia, Baltimore & Washington, at an estimated cost of $604,094. Each applicant is to finance its [fol. 2303] proposed construction from current funds available in their respective treasuries. The cost of construction would not be improvident to the applicants. The track will lead out from the westbound main line of the Kensington & Eastern at a point a short distance east of Doty Avenue and then extend east and north to a connection with the proposed track of Pennsylvania on land owned by the Pennsylvania. A portion of the Pennsylvania con-

[2] In this report, as throughout the record, the individual railroads sometimes will be referred to by the distinctive names in each corporate title, or by the designation shown in parentheses.

[3] The Kensington & Eastern and the Philadelphia, Baltimore & Washington are nonoperating companies. The former is owned by the Illinois Central, and the latter is leased by the Pennsylvania.

struction would be on property leased from the Chicago Regional Port District, hereinafter referred to as the Port District. The connection between the Illinois Central and the Pennsylvania segments would be made at about 130th Street, and the Pennsylvania track, in turn, would connect with the track owned by the Port District.

In the same application the Illinois Central, the Pennsylvania, and the Chicago South Shore and South Bend Railroad (South Shore) seek authority under section 5(2) of the act for the acquisition of trackage rights over the line to be constructed and certain existing tracks over which it is necessary to operate in order to reach the Lake Calumet Harbor Port, hereinafter sometimes called the harbor or port. The railroad properties of the Kensington & Eastern are leased to and are operated by the South Shore. A crossover would be installed between the eastbound and westbound tracks of the Kensington & Eastern immediately west of the connection with the track leading to the port to enable trains coming to the harbor to cross from the eastbound to the westbound track of the Kensington & Eastern to enter the track leading to the port.

By application filed April 25, 1957, and recorded in Finance Docket No. 19742, The Belt Railway Company of Chicago (Belt Railway or Chicago Belt)[4] requests author- [fol. 2304] ity under section 5(2) of the act to acquire trackage rights over the Illinois Central, the Kensington & Eastern, the South Shore, and the Pennsylvania from a point in its line at or near 95th Street to a point on the railroad tracks of the Port District on the west side of Lake Calumet Harbor, near 130th Street.

By application filed September 9, 1957, in Finance Docket No. 19921, The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana

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[4] Originally the Chicago Belt filed an application in Finance Docket No. 19391 for permission to construct a line of railroad to the property of the Port District. Upon motion of the Chicago Belt, its application to construct was dismissed without prejudice by order of the Commission dated January 25, 1957.

Harbor Belt Railroad Company[5] applied for authority under section 5(2) of the act to acquire trackage rights on behalf of the New York Central and Indiana Harbor Belt over the lines of railroad owned or operated by Illinois Central, Kensington & Eastern, the South Shore, and the Pennsylvania leading to Lake Calumet Harbor Port.

A joint hearing on the applications was held at Chicago. The hearing commenced on September 30 and continued until October 11, 1957. Briefs were filed. Intervening petitions in support of the applications were permitted on behalf of the Board of Trade of the city of Chicago, the Chicago Association of Commerce and Industry, the Port District, the North Pier Terminal Company, the Calumet Harbor Terminals, the Packers Terminal Warehouse, and the Secretary of Agriculture of the United States. Intervening petitions in opposition to the applications were filed by the New York, Chicago & St. Louis Railroad Company (Nickel Plate) and the Rock Island, in which the Pullman Railroad Company[6] joined. Unless otherwise indicated, [fol. 2305] all points hereinafter mentioned are in the State of Illinois.

Jurisdiction.—On September 9, 1957, the Rock Island and the Nickel Plate filed written motions to dismiss the applications in Finance Dockets Nos. 19538, 19742, and 19921 under section 5(2) of the act for trackage rights over lines of railroad proposed to be constructed to serve Lake Calu-

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[5] These same three applicants have pending in Finance Docket No. 19448 an application under section 1(18) of the act for authority to construct a line of railroad from 126th Street to the Lake Calumet Harbor Port of Chicago. If the application for trackage rights requested in Finance Docket No. 19921 is granted, the construction application pending in Finance Docket No. 19448 should be dismissed.

[6] Because of the fact that Pullman is controlled through stock ownership and operated by the Rock Island under lease, their joint interests and actions herein will be considered and referred to as those of the Rock Island which, along with the Nickel Plate, sometimes will be called the interveners in opposition.

met Harbor. The motions pointed out that the applicants, among other things, requested approval and authorization under section 5(2) of trackage rights over the various segments of tracks proposed to be constructed by the applicants. The substance of the respective motions is that the Commission does not have jurisdiction under the act to approve and authorize trackage rights over tracks which do not exist. Section 5(2), they state, relates only to tracks "owned or operated" by a railroad carrier, and not to tracks proposed to be constructed in the future.

The authority requested by the applicants under section 1(18) to construct, and under section 5(2) for trackage rights, constitutes a single plan whereby each of them proposes to provide additional rail service to the facilities now located or hereafter to be located at Lake Calumet Harbor. Orderly procedure dictates that all applications required to effect the entire plan be heard simultaneously, particularly, as here, where the evidence to be presented in support of the construction and trackage rights is identical. Heretofore, the Commission has authorized construction of a line of railroad and at the same time approved operation under trackage rights over the line to be constructed. See Finance Docket No. 18534, *Spartanburg Terminal Company Construction,* 295 I.C.C. —— (not printed in full), decided July 10, 1957, and *Arkansas & L. M. Ry. Co. Construction,* 290 I.C.C. 112, decided October 23, 1953. To the same effect compare *City of Milwaukee* v. *Chicago & N. W. Ry. Co.,* 279 I.C.C. 521, and Finance Docket No. [fol. 2306] 15925, *Northern Pacific Railway Company, Et Al. Trackage Rights, Etc.,* —— I.C.C. —— (not printed in full), decided September 28, 1948. In the light of the decisions cited, there appears no valid reason to require the applicants herein to approach the problem of providing additional service to the port in a manner other than has been presented by the pending applications. The motions to dismiss the applications, therefore, should be overruled.

Objections to receipt of evidence.—At the opening of the hearing, counsel for the interveners in opposition objected

to the introduction of any evidence relating to Lake Calumet Port traffic other than that moving in import and export commerce, on the ground that the scope of the various applications had been limited by certain pleadings filed in response to the intervening petitions on behalf of the Rock Island and the Nickel Plate. The purpose of the hearing was to develop all the facts pertaining to the public need for additional rail service to and from the port. The facilities already established and to be established at the port are to be used extensively in the handling of domestic as well as import and export traffic, and there appears no reason for limiting the kind of service to be performed by the applicants in the event their applications are granted. As a general rule, the Commission will not restrict or limit the type of service to be performed by a rail carrier subject to part I of the act. See *Northeast Oklahoma R. Co. Construction,* 252 I.C.C. 273 (285). Applicants propose to serve the port without restriction as to the type of traffic to be handled. Determination of the primary issue of public convenience and necessity for additional rail service cannot be limited by the contents of a pleading in response to a petition for leave to intervene.

The Rock Island also contended that evidence dealing with rate matters had no place in these proceedings and [fol. 2307] should have been excluded by the examiner. The question of rates, while not necessarily of controlling importance, is a factor which may be considered along with all the other evidence in determining whether the public convenience and necessity require construction of a line of railroad into a particular area.

Representations of the applicants.—Numerous reasons are advanced by the applicants in support of the general proposition that the proposed construction, and operation under trackage rights, would comply fully with the public convenience and necessity requirements of section 1, and the consistency with the public interest provision of section 5, respectively, of the act. It is urged that for various and

sundry reasons the industries now or hereafter located in the area comprising Lake Calumet Harbor must have the many advantages and benefits of applicants' service for fruition of the plans envisioned and in the process of being executed, on schedule, by the Port District, and that the impelling need for the additional rail service at the port is due to the increased common-carrier traffic to become available for rail transportation upon completion of the St. Lawrence Seaway early in 1959.

Contentions of the interveners in opposition.—The Rock Island and the Nickel Plate controvert practically every point advanced by the applicants in support of the applications. The Rock Island opposes the applications on the grounds, among others, that it is serving and will continue to serve adequately the Port District; that it proposes and is prepared to expend further sums of money to keep in a position to serve the port adequately; that it is capable of performing adequate service in the future to meet the rail transportation needs of the Port District; that it is entitled to retain the rail traffic of the Port District; that there is no reason sufficient in law for applicants' extension of their lines of railroad and operations to serve territory [fol. 2308] heretofore served exclusively and adequately by the Rock Island; that the expenditures of sums of money required to be spent by applicants to serve the Port District cannot be justified either in fact or in law; and that applicants' extension of their line of railroad and operations to serve territory heretofore served exclusively and adequately by the Rock Island cannot be supported by public convenience and necessity could mean only a duplication of rail facilities, and would create unsound and uneconomic conditions in transportation.

It is the position of Nickel Plate that, because it and the Rock Island can furnish complete and adequate railroad service to the east and west sides, respectively, of Lake Calumet, the various applications in this proceeding should be denied. It states that the applicants have failed

to file appropriate applications for authority, so that even if the pending applications should be approved, contrary to established principles of proof, the applicants would still not be authorized to operate within the Port District. The Nickel Plate can visualize nothing but general congestion, confusion, and a breakdown of transportation if the applicants are permitted to extend operations to the port area.

Principal issues of fact.—Whether the additional service proposed by the applicants through construction of a new line of railroad is required by the public convenience and necessity, and whether operation under trackage rights as proposed is consistent with the public interest present numerous issues of fact which must be resolved in large measure from conflicting opinion evidence of experts, all well qualified to speak concerning matters within their particular fields. Voluminous findings of fact and conclusions, 114 of which are by the interveners in opposition alone, many bearing upon the same issue, are requested. Discussion will be confined to those points which are considered essential to the proper disposition of the applications.

[fol. 2309] *Applicants and proprietaries.*—Illinois Central serves 14 mid-America States with main lines extending from the shores of Lake Michigan to the Gulf of Mexico. It serves large industrial, agricultural, and manufacturing centers and reaches many important cities at which a substantial volume of traffic is interchanged with connections.

Pennsylvania operates in the industrial northeastern section of the United States, excluding New England. The population of the 13 States served by it comprises more than 40 percent of the total population of the country. Two trunk lines of the Pennsylvania and their connections form, in effect, a double belt loop which serves the south side of the Chicago area from Union Station to the southern edge of the switching district. The most southerly of these loops or belts entirely surrounds the Lake Calumet Port area.

The New York Central system is made up of approximately 11,000 miles of tracks situated in the northern and eastern portions of the United States and in the provinces of Ontario and Quebec, Canada. One of its main lines begins at LaSalle Street Station in Chicago and extends generally east, with numerous connections and branch lines terminating at Boston, Mass., and New York, N.Y. The New York Central parallels the St. Lawrence Seaway. Many of the important areas served by the New York Central in Illinois, Indiana, Ohio, and Michigan will use the Chicago Port as an ocean gateway.

The properties of Chicago Belt extends from the northern extremity of Grand and Cicero Avenues in Chicago to an area know as the South Chicago District in the vicinity of 112th Street and Torrence Avenue. By virtue of trackage rights on the line of the Chicago & Western Indiana Railroad, the Belt Railway operates to a point known as Burnham, where it interchanges traffic with the South Shore.

Belt Railway is owned by the following 12 trunkline railroads serving Chicago: The Atchison, Topeka & Santa Fe [fol. 2310] Railway Company (Santa Fe), Chesapeake & Ohio Railroad Company, Chicago & Eastern Illinois Railroad Company, Chicago, Burlington & Quincy Railroad Company, the Rock Island, Erie Railroad Company, Grand Trunk Western Railroad Company, Illinois Central, Monon Railroad Company, Wisconsin Central Railroad Company (operated by the Soo Line), the Pennsylvania, and the Wabash Railroad Company. The owner lines interchange cars directly with one another through the Chicago Belt facilities at Clearing Yard pursuant to the terms of an operating agreement entered into November 1, 1912. Under this agreement the 12 owner roads pay the cost of operating and maintaining the Belt Railway on a user basis. Regular tariff charges are applicable to other traffic handled by the Belt Railway. Belt Railway not only has a direct connection with each of its owning railroads, but with all other road-haul lines operating into and out of Chicago as

well. It also connects directly with all switching lines in the Chicago switching district, except those of the Chicago Junction Railway and the Chicago Produce Terminal Company. The rails of the owner lines of the Belt Railway extend from the Atlantic Ocean to the Pacific Ocean, and from the Gulf of Mexico to Canada where, through Canadian ownership of two of the lines, all of Canada is reached.

Clearing Yard is approximately 18.5 miles from the port. The operations of the Belt Railway fall into three main categories: (1) cars interchanged between owner lines; (2) cars interchanged between nonowner lines, or between Belt Railway owner lines and nonowner lines; and (3) cars switched for local industries. In 1954, the total number of cars handled by the Belt Railway was 1,829,526; in 1955, it handled 1,939,721 cars; and in 1956, there were 2,022,265 cars. The methods whereby cars are transferred via the medium of the Belt Railway are meticulously set out in detail in the record. At the present time, three classifica- [fol. 2311] tions are made for the Rock Island: (1) at Clearing Yard for pull by Rock Island power to its Burr Oak Yard, approximately 12 miles from the port; (2) for industries in the South Chicago District which the Chicago Belt delivers to the South Chicago Yard and which is pulled from there by the Rock Island into its own adjacent yard; and (3) cars for the Pullman Railroad handled by Belt Railway power from Clearing Yard to Pullman Junction and then into the Rock Island 97th Street Yard at a point immediately west of the north end of Lake Calumet.

Indiana Harbor Belt is one of the largest terminal switching carriers in the Chicago switching district. It operates 648 miles of track in Illinois and Indiana. The eastern terminus is located at Dune Park, Ind., thence runs westerly through Gary, Gibson, and Hammond, Ind., Calumet City, Dolton and Blue Island, thence northwesterly through Chicago Ridge, Argo, McCook, LaGrange, Broadview, Bellwood, Melrose Park, and Franklin Park. Indiana Harbor Belt is owned 60 percent by the New York Central

and 20 percent each by the Chicago & North Western Railway Company and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. The North Western operates approximately 8,000 miles of lines serving the States of Illinois, Wisconsin, Minnesota, Iowa, Nebraska, North Dakota, South Dakota, and Wyoming. The Milwaukee operates a railroad system of over 10,000 miles extending from Chicago to Seattle, Wash., serving many important industrial centers. The Indiana Harbor Belt has direct connections at 63 different points with all 31 trunk-line carriers serving Chicago.

South Shore extends from its western terminus at the Randolph Street station of the Illinois Central to its eastern terminus at South Bend, Ind., approximately 90 miles. The trackage from South Bend to the Indiana-Illinois State line is owned by South Shore. From the State line to Kensington station at 115th Street it is operated under a [fol. 2312] long-term or perpetual lease from the Kensington & Eastern. From the Kensington station to Randolph Street station, the operation is under a trackage agreement with the Illinois Central. The South Shore is located in a highly industrialized area, which is served with high-speed, electrically-powered main-line service. Its main line runs immediately to the southwest of the Port District in the Lake Calumet Harbor area.

Rock Island facilities.—As a result of a sustained modernization program started in 1937, the Rock Island now has an up-to-date physical plant capable of providing efficient railroad service throughout its entire system. Since taking over operations of Pullman on January 1, 1950, the Rock Island has made and is making many improvements and betterments in the Chicago division, and other improvements and betterments are planned. The recommendations for improvements on the Chicago division include several projects, costing nearly $500,000, in the Chicago and South Chicago Calumet area yards alone. The present capacity of those yards is 4,981 cars, which can be

expanded to a total of 9,733 cars. Rock Island's present entrance into the port area is from the south; it temporarily crosses Doty Avenue at grade because of highway construction in the vicinity, but the railroad is constructing a single-track overhead entrance which may be expanded to two tracks later. This will be the Rock Island's permanent trackage into the Lake Calumet Port area from the south.

A track leading off the Pullman branch near 103rd Street serves the garbage-disposal area at the northwest edge of Lake Calumet. This track crosses Doty Avenue near 107th Street extended. It is the plan of the Rock Island to adjust the route to serve the port area from the north and to connect into the Port District tracks which will parallel Doty Avenue on the west side of the lake. This connection would provide two-way service into the switching and service tracks of Lake Calumet Port.

[fol. 2313] No complaint has been made of Rock Island service to the industries at the port, particularly since the filing of the applications when superior service with ample engines and crews was instituted and has been continued. Not only does the Rock Island have a flexible switching operation in the vicinity of the port, but its entire terminal operation is also geared to provide a constant flow of cars into and out of the area without interfering with the work being performed by the engines pulling and setting cars at dockside or at the various transit sheds, warehouses, and elevators. It is prepared to furnish such additional service as may be required in the area. A proposed new yard with a capacity of 412 cars would be constructed by the Rock Island in the vicinity of 124th Street which would be used for switching and classifying cars for delivery to various railroad connections and to the port industries. From the south entrance of this proposed new yard to the Port District tracks would be a distance of approximately 7,400 feet. The Rock Island states that its plans for serving the port have been revised from time to time as developments required, and that such planning will continue

to be flexible so as to meet traffic needs as they arise. The Rock Island maintains direct interchange facilities with 15 trunk-line carriers in the Chicago switching district.

The Rock Island operates approximately 7,600 miles of railroad lines in 14 States, serving vast areas and important gateways within the midwest and southwest. It is in a position to participate in volume traffic moving to or from the territory lying west of the Great Lakes and the Mississippi River to the Pacific Ocean and the Gulf of Mexico. In contrast to the position of some of the applicants herein, particularly the New York Central and the Pennsylvania, the Rock Island is complementary to and not competitive with the water route which will be responsible for development of the traffic at the port.

[fol. 2314] *Nickel Plate.*—Nickel Plate's line into Chicago parallels the eastern side of Lake Calumet, and is the nearest line of railroad to Lake Calumet on the east. Its Calumet Yard is located on the northeast side of the lake. All of the Nickel Plate's Chicago road trains and its interchange movements with other carriers originate and terminate at Calumet Yard. Exclusive of the area now in use for enginehouse facilities, yard classification tracks, coach yard, cleaning, repair and inspection tracks, there are 430 acres in this parcel.

The present capacity of Calumet Yard is 1,909 cars. There is room on this parcel for the construction of 2 additional yards, each with a capacity of 2,000 cars, and, by rearranging tracks, the present yard could accommodate another 800 cars. This would give a total capacity of 6,709 cars on the parcel, with 300 acres left over. Between 87th Street and 93rd Street, Nickel Plate also owns land on which it could erect another yard with a capacity of 1,200 cars, giving it a total yard capacity of 7,909 cars. Without doubt, the Nickel Plate is ideally situated to provide service to the northern and eastern sides of the lake.

Port District.—The Chicago Regional Port District, a political subdivision, body politic and municipal corpora-

tion, was created by an act of the State of Illinois Legislature, approved June 6, 1951. The duties of the Port District, generally stated, are to study existing harbor plans and recommend improvements therein to meet changing business and commercial needs; to investigate and prepare plans for the development of the port facilities; to study and make recommendations for improvement of terminal and other facilities for the promotion of commerce; to acquire, own, construct, lease and maintain port and harbor, water and land terminal facilities; and to perform other acts to improve the port facilities in the handling of commerce in and through the Port District.

[fol. 2315] The area of Port District originally embraced the territory located south of 87th Street and west of Lake Michigan, including Lake Calumet. In 1957, the law was amended to restrict the area of the Port District to property owned by it in Lake Calumet and a small amount of adjacent property. Port District has the continuing power under the law to borrow money for the purpose of acquiring, constructing, reconstructing, extending or improving terminals, terminal facilities and port facilities, for acquiring any property and equipment useful for such purposes, and for acquiring necessary cash working funds.

In furtherance of the powers granted pursuant to the statute, the Port District issued and sold $24,000,000 in revenue bonds, the proceeds therefrom having been used to construct its first-stage development, consisting of dredging Lake Calumet, particularly the turning basin and slip No. 1 to deep-water specifications, construction of docks, grain elevators, Port District office, warehouse, transit sheds, and installation of 14 miles of railroad track, all of which facilities have been completed. These facilities were designed for the handling, warehousing, and stopping in transit of domestic freight as well as import and export business. It is the declared policy of the Port District to attract and utilize the services of all rail carriers which have a primary interest in the development of the Lake

Calumet Harbor as a rail-truck-barge-ship interchange harbor.

In the spring of 1955, the Port District procured a quit claim deed to the bed of Lake Calumet from the city of Chicago, in return for which the Port District paid the city $250,000. An amendment to the Port District act provides that all the facilities which the Port District was empowered to create, as well as those which would be developed over a period of years, would, by law, be turned into private hands for lease and operation. As a consequence, each facility in itself is a separate entity in the hands of a private operator.

[fol. 2316] The west side of Lake Calumet has been set aside for commercial purposes. At the present time the Port District has completed and has in operation two 6½-million-bushel grain elevators, three transit sheds comprising 300,000 square feet of space, a backup warehouse comprising 200,000 square feet, and 14 miles of railroad yard "hold" tracks. Transit shed No. 1 is leased to the North Pier Terminal Company; transit shed No. 2 is leased to Packers Terminal and Warehousing Company, and shed No. 3 has been leased to the Calumet Harbor Terminals. The backup warehouse has been leased to North Pier Terminal and Calumet Harbor Terminals. Elevator No. 1 is leased to the Illinois Grain Company and the other elevator has been leased to the Rice Powell organization. These facilities are now served exclusively by the Rock Island, and all rail carriers reaching Chicago obtain ready access to them by the absorption of switching charges.

The "hold" tracks heading north behind the grain elevators within the Port District will accommodate about 300 cars. Those tracks, in part, will be called upon to meet the demands of both the inbound and outbound arrivals into the Port District. When those tracks are no longer able to accommodate the requirements of the elevators and sheds, additional trackage will be required. The additional trackage will not be constructed in the harbor area, because the Port District does not intend to make

any more hold yards as such in that area. It is not contemplated that additional hold tracks or storage-track facilities will be expanded, and any railroads serving the harbor area will be required to adhere to this physical requirement.

As for future development, the Port District hopes to place in motion phase 2 of its development program, consisting of the dredging of slips 2 and 3 and the construction of related structures on the southwestern and [fol. 2317] southeastern sides of the lake, within a year from the date of hearing, for completion in 18 months or 2 years. It is the hope of the Port District to complete development of the entire west side of the lake for commercial purposes in 10 years.

Proposed lease agreement between the Port District and the applicants:—The applicants have submitted a proposal to the Port District to lease the tracks and other facilities now or hereafter provided for railroad purposes. The railroads would pay the Port District rental for their use, and, at applicants' expense, maintain such tracks and facilities and provide the switching service necessary on such tracks to meet the requirements of the tenants of the port. The applicants have agreed among themselves that they would jointly provide engines to perform the switching service required by all the railroads within the port, furnish the personnel to maintain tracks and facilities, provide switching service and perform such other railroad work or service that may be required therein. Each of the applicant railroads proposes to bring its cars to the port and receive cars therefrom on designated tracks in the Port District yard, from and to which tracks cars will be switched for each of the applicants to and from industries within the port by engines provided for such service. Maintenance of the tracks and facilities and switching operations would be under the supervision of an officer selected by the applicants who would report to and be governed by directions of a board of managers composed of one representative of

each of the railroads, parties to the agreement with the Port District authorities. The maintenance of the tracks and facilities and the switching operation thereon within the port would be conducted as a joint facility, and each railroad would assume and bear a car-proportionate share of the expense incident to the maintenance and operation of such tracks and facilities, in the same ratio that the [fol. 2318] number of loaded cars brought to and taken from the port by each applicant bears to the total number of loaded cars of all railroads during such month. As the volume of business increases at the port and the applicants should deem it advisable to lease or purchase the locomotives and assign them to service within the port, each of them would advance, in equal proportion, the purchase price of such locomotives.

The Port District further would agree not to permit any other person, company, corporation or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the Lake Calumet Harbor area other than as presently covered by leases or contracts with the Pullman Company and the Philadelphia, Baltimore & Washington Railroad Company, except upon written approval from the applicants as lessees. Section 4 of the proposed agreement provides, among other things, that the Port District should provide such additional land and construct such additional tracks and facilities as may be requested by a majority of the applicants and add the cost of same to the valuation base on which the applicants would pay rental under the agreement. The applicants would agree, at their sole cost and expense, to operate the property as a joint facility and to maintain it and to furnish railroad service adequate to meet reasonable and practical requirements of industries which are tenants of the Port District. The applicants would agree to permit other railroads having physical connections with the property to become parties to the proposed agreement upon receipt of written application from such other railroads, provided those railroads would agree to be bound by the

terms and conditions of such agreement in the same manner as though they had been original parties to it.

The property would be leased to the applicants for an annual rental based on 5 percent of an agreed current valuation, provided that the total rental, payable in any [fol. 2319] calendar year, should not exceed an amount equivalent to $2 per car, loaded or empty, or locomotive handled to or from the property during such calendar year. The contract of lease would run for 20 years, with the option in the applicants for a renewal for 4 additional terms of 20 years each, on the same terms and conditions.

The joint facility agreement.—The proposed joint-facility agreement was subscribed to in principle by all the applicants on September 4, 1957. In and by the terms of the agreement, the applicants agreed among themselves, among other things, to perform all switching within the port properties under a joint-switching arrangement. Each applicant would furnish a diesel switching locomotive for 1-year periods, in rotation. Additional locomotives would be furnished in rotation, if required. Members of the engine and switching crews were to be selected from employees of the railroads. The applicants severally would perform track or other maintenance work and provide wrecking service on the port property. Following the initial development period, a manager would be appointed who would have charge over the operations of the railroad service on the port property. Each of the railroads would deliver its inbound cars to and receive its outbound cars from the Port District yard facilities which are to be leased and operated by the applicants as a joint-switching facility. All funds required for any facilities which the applicants might be required to provide would be funds advanced in equal proportions by each of them, and each railroad would have an undivided interest in such facilities with each of the other railroads. All other costs and expenses incident to the joint arrangement would be allocated on the basis of use.

Trackage agreements.—Trackage agreements were entered into by the applicants on various dates providing for the use by each of them of some of the tracks of the other [fol. 2320] applicants. The Illinois Central granted the Pennsylvania bridge rights over its main line between the junction with the Chicago Belt tracks at 95th Street, or the junction with the Pennsylvania tracks in the vicinity of Riverdale, and the junction with the Kensington & Eastern tracks near Kensington.

The Illinois Central, South Shore, and Kensington & Eastern have entered into an agreement, allowing the Pennsylvania bridge rights over the tracks of the Kensington & Eastern between Kensington and a point immediately west of the Calumet River. The Illinois Central has also entered into agreements, granting the Pennsylvania and South Shore bridge rights over the tracks which it proposes to construct between the junction with the Kensington & Eastern tracks and the junction with the tracks of Pennsylvania, immediately west of the Calumet River, in the vicinity of 130th Street. All of these agreements are for the purpose of allowing the Pennsylvania to reach its property immediately west of the Calumet River.

In addition, the Illinois Central and South Shore have entered into agreements with the Pennsylvania, granting bridge rights over tracks of Pennsylvania west of Calumet River, connecting tracks of Illinois Central and those of the Port District.

Agreements have been entered into by the Chicago Belt, the Illinois Central, Kensington & Eastern, South Shore, and Pennsylvania, enabling the Chicago Belt to reach the property of the Port District by means of bridge rights over tracks of the Illinois Central from an existing connection of the Belt Railway with the Illinois Central tracks near 94th Street at Greenwood Avenue, thence southerly on the Illinois Central tracks to Kensington, thence over the Kensington & Eastern tracks from Kensington to a point east of Doty Avenue, where a new track is to be built by the Kensington & Eastern to a junction with a new

track to be built by the Illinois Central to connect with a [fol. 2321] track to be built by the Pennsylvania at the north side of 130th Street, just west of the Little Calumet River, thence over such Pennsylvania track to a connection with the tracks of the Port District.

Illinois Central, Kensington & Eastern, and South Shore have also entered into contracts with the New York Central (lessee of Michigan Central) and the Indiana Harbor Belt, under which the latter two lines are granted bridge rights jointly with other lines, as a tenant of the Illinois Central, over the tracks of the Kensington & Eastern from the junction of its tracks with those of the Michigan Central, near 124th Street, to the junction of its tracks with those of the Illinois Central east of Doty Avenue and west of the Calumet River. The Illinois Central granted a joint bridge right for the use of its tracks extending to the tracks of the Pennsylvania on the west bank of the Calumet River north of 130th Street, from which point these two roads, under agreement with the Pennsylvania, will use the Pennsylvania tracks to reach the tracks owned by the Port District.

These contractual arrangements have been made among the applicants with respect to trackage and bridge rights to reach the Port District tracks. The trackage to be used by the applicants will be multiple on the Illinois Central to Kensington, and double tracks from Kensington to the junction with the track leading off the Kensington & Eastern to the port. The track to be constructed will be a single track leading out of the elevated westbound main line of the Kensington & Eastern in an easterly direction to grade and then north under the present bridge spanning the Calumet River at 130th Street, thence north to the connection with the track to be built by the Pennsylvania. This single track will then extend in a northerly direction along the west bank of the Calumet River, thence northwesterly across the property occupied by the Calumet Harbor [fol. 2322] Terminals, Inc., and owned by the Pennsylvania, to a connection with the Port District tracks. The main-

line tracks of the Illinois Central and Kensington & Eastern are block-signaled and the junction at Kensington is protected by interlocker. The switches on the crossover between the two main tracks of the Kensington & Eastern and the connection with the single track leading down into the port will be remotely controlled.

All of the trackage agreements provide, among other things, that the right granted to use the tracks would be for the purpose of enabling the user to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Port District, but, under the terms of the agreement, the user would have no right to use such tracks to deliver or receive any freight traffic to or from any industry presently or thereafter served exclusively by the owner of the track. The engines, cars, and trains of the user would move over the track or tracks designated by the owner carrier from time to time for such movements. Such tracks would at all times be under the control and management of the owner carrier and its duly authorized representative, and operations would be conducted on schedules and in accordance with orders and regulations prescribed by said representatives.

Trackage charges.—The agreements as originally executed provided for the following charge per car, loaded or empty (with one count for each diesel locomotive unit but no count for cabooses): For use of the Illinois Central main line $2; for use of the Kensington & Eastern $2; for use of the Illinois Central extension 25 cents; and for use of the Pennsylvania extension $2.50. Provision was made for reducing the charges for use of the Illinois Central main line and the Pennsylvania facilities by 50 percent after 7,000 car counts per year. The charges were predi- [fol. 2323] icated on the amount of business anticipated at the time the agreements were drawn. However, at the hearing, the applicants determined that the amount of business anticipated was grossly underestimated, and that it now appears to them that a satisfactory revenue can be

obtained by counting only loaded cars and locomotives, with no charge for cabooses, and no reduction of charges after 7,000 cars per year. Amended agreements to carry out this change have been filed with the Commission since the close of the hearing.

Applicants' plan of operation.—Witnesses on behalf of the applicants emphasize the fact that a large port handling ocean-going traffic cannot efficiently operate unless adequate supporting rail facilities are available. The combined yard capacity of the applicants is 61,601 cars, or more than 12 times that presently available to serve the port through the Rock Island. The Kensington Yard of the New York Central is located 1.5 miles from the port. It has a present car capacity of 792, but space is available to install tracks to accommodate more than 2,000 additional cars. The total running time from the Kensington Yard to the port would be about 20 minutes. Under the plan, trains of the applicants would be on the tracks of the South Shore for approximately 5 to 8 minutes. Because Kensington Yard is immediately adjacent to the port facility, in the event of overtaxing of the Port District yard, it would be made available for use by all railroads entering the port.

The Illinois Central proposes to serve the port with its own trains from its Markham yard via its tracks to the junction with the Kensington & Eastern at Kensington, thence over the Kensington & Eastern and the single lead track to be constructed into the Port District yard. As time or the occasion may require, service would also be made from the Wildwood yard over a portion of the same route. It would be necessary to use the crossover from the [fol. 2324] eastbound main track to the westbound main track of the Kensington & Eastern to reach the single lead track to the port.

The Wildwood Yard of the Illinois Central is 3.8 miles and 35 minutes running time from the port. It has a capacity of 1,300 cars, which could be expanded to 4,000 cars. Markham Yard of the Illinois Central is 9 miles from the port, and the running time in each direction is approxi-

mately 1 hour. Its present car capacity is 9,050, and there is room available to expand to 13,300. Hawthorne Yard, capacity 550 cars, is 23.5 miles and Congress Street Yard, capacity 800 cars, is 16.3 miles from the port. Traffic from the west destined to the port would move through Hawthorne Yard to Congress Street and from there into the port with a running time of 3 hours. If a complete trainload from the west is destined to the port, it would move in much less time directly from Hawthorne to the port without being set out at Congress Street or Wildwood. Under the proposal, cars of the Illinois Central would be spotted at the port on the same day, or within 24 hours after arrival at Chicago.

Pennsylvania has two main trunk lines serving Chicago. First, the line from Chicago through Fort Wayne, Ind., to Pittsburgh, Pa., and, secondly, the so-called Panhandle line through Logansport, Ind., to points south and east thereof. Within the Chicago switching district, the Fort Wayne line and the Panhandle line are connected at 3 places. The Pennsylvania has 3 major freight yards and 6 other supporting yards in the Chicago area.

Pennsylvania expects to serve the port area initially from Dolton Yard, capacity 570 cars, expandable to 1,000 cars, located on the Panhandle line due south of the port area at 159th Street. Except for the connection with the Illinois Central at Riversdale, the route from Dolton Yard [fol. 2325] to the port is over main tracks with signals and interlockings. The total distance is 9.3 miles, and the running time would be about 1 hour. If volume and service would necessitate additional Pennsylvania operations to the port, it could also be served via the Fort Wayne line, Chicago Belt, Illinois Central, and the Kensington & Eastern from Colehour Yard, capacity 1,743 cars, expandable to 2,500 cars. The distance from Colehour Yard to the port over this route is 10.9 miles and the running time about 1½ hours. The location of existing Pennsylvania facilities with respect to the port area would make it possible to integrate the traffic to and from the port into its

existing schedules, and the only additional crews required would be those to move the traffic in either direction between the port, on the one hand, and Dolton or Colehour Yards, on the other.

The New York Central has 3 trunk lines entering Chicago. The Northern District (Michigan Central) passes through Gibson Yard and terminates at Kensington Yard, approximately 1.5 miles west of the port. The Southern District (Big Four) enters Chicago over the Illinois Central's route from the south and moves over the Illinois Central tracks west of Kensington Yard. The Western District is the New York Central line near Lake Michigan which includes, from south to north, Indiana Harbor, South Chicago, and Englewood Yards, and terminates at LaSalle Street Station. The yards which the New York Central proposes to use for Port District business are 4 in number with a combined present car capacity of 5,187, and all are within a distance of 20 miles from the port.

Inbound grain shipments are inspected at the Gibson Yard on the Indiana Harbor Belt, located approximately 10 miles from the port. Gibson Yard has a capacity of 6,260 cars and there is enough space available for an expansion to a total of 7,760 cars. The major routes to be [fol. 2326] used by the New York Central with its own trains in service to the port are as follows:

1. Cars would be classified at Elkhart, Ind., and set out at Gibson, then moved to Kensington and into the port yard. Facilities recently placed in operation at Elkhart have reduced the detention time of cars held for classification from 24 to 8 hours.

2. Cars classified at Elkhart could be taken, if the volume warranted, directly to Kensington and then to the port yard.

3. If the volume was sufficient, cars at Gibson would be moved direct to the port yard.

4. Cars in Englewood Yard, about 19.5 miles from the port, would be taken either to the Chicago Junction, Ash-

land Avenue, or Leavitt Street Yard and then taken by the Chicago Junction to Kenwood and south over the Illinois Central to Kensington Yard and then by the New York Central to the Port District Yard.

5. Cars in the South Chicago and Indiana Harbor yards would be moved ordinarily to Gibson, then to Kensington and finally to the port yard. The movement from the Kensington Yard to the port would be via a connection of the Michigan Central with the Kensington & Eastern in the vicinity of Kensington, thence over the latter to the track leading into the port.

There are 7 main yards, having a total present car capacity of 17,246, located along the line of the Indiana Harbor Belt. Of these yards, 5, having a capacity of approximately 15,000 cars, are located less than 20 miles from the port. The Indiana Harbor Belt has access to the Kensington Yard of the New York Central. It also has trackage rights from the Kensington Yard across the Kensington & Eastern to a connection with the Pullman division of the Rock Island. The Indiana Harbor Belt proposes to handle the business in its own trains to and from the [fol. 2327] port by using yard facilities at Kensington. This business would be handled to the Kensington Yard over joint Michigan Central-Indiana Harbor Belt tracks from Gibson.

The Blue Island Yard of the Indiana Harbor Belt is the point of receipt for all western-line cars and the point of delivery to all eastbound and southbound carriers. Movement of trains from the Kensington Yard to the port would be the same as for the New York Central. If movements were to be made direct from Gibson Yard to the port, the trains would move over the Michigan Central to its connection with the Kensington & Eastern, thence into the port.

Movements to the port under the proposed trackage agreements would be handled by the Chicago Belt over Belt Railway tracks from Clearing Yard, capacity 10,673 cars, to an existing connection with the Illinois Central

tracks at Burnside, near 94th Street and Greenwood Avenue, thence southerly on the Illinois Central freight tracks to Kensington, thence over Kensington & Eastern tracks from Kensington to a point east of Doty Avenue, where the new track is to be placed to connect with the tracks of the Pennsylvania at the north side of 130th Street just west of the Little Calumet River, thence over Pennsylvania tracks to a connection with the tracks of the Port District. In the event of congestion at the port, Belt Railway cars could be held at Cragin Yard, capacity 1,000 cars, or its 22nd Street Yard, capacity 1,400 cars. The running time from Cragin Yard to the port is estimated at approximately 3 hours.

The South Shore is the only applicant that would approach the port lead track from the east. The Port District would be served by South Shore in its own trains from Burnham Yard, approximately 4 miles from the port. Burnham Yard has a present car capacity of 400 cars, which could be expanded to about 750-car capacity. Service to the port would be made by means of the lead track [fol. 2328] extending from the westbound main track of the Kensington & Eastern into the port.

Movements from the port by the separate trains of the applicants would traverse the same routes taken by the trains of the same applicants to the port.

The method proposed by the applicants to reach and serve the port is the same as used in other similar areas. It is a common operating practice and is economical as well as practical. The joint-facility plan has many advantages, in that the switching operations required on the part of all the railroads within the port may be coordinated and performed by a joint switch engine or engines under the supervision and direction of the person so designated by the applicants without favoritism or discrimination. By the joint arrangement, cars of each of the railroads, as and when required by industries, could be placed at one spotting. There would be no duplication of switching, resulting in substantial saving in time and money, as cars

would be loaded or unloaded more quickly and would be handled into and out of the port with greater dispatch than if all railroads in the port did their own switching.

Feasibility of applicants' proposed operations.—Interveners in opposition contend that the proposed operations of the applicants into the harbor area would create delays, congestion, and confusion in the movement of cars to and from Lake Calumet Port. They state that all movements by the applicants to and from the port would necessitate the use of tracks now handling a considerable volume of freight and passenger traffic, thereby increasing the density of traffic on and restricting the use of the tracks now in service, the crossing of tracks and public highways at grade, operation through interlocker plants, backup movements, and the use of a single port-entry track under the 130th Street bridge with an undesirable curvature of 20 degrees, all of which would make impossible a coordinated [fol. 2329] and practical operation for the applicants into the port. Interveners in opposition point out that at present only 10 tracks are available in the port area to handle the additional traffic moving via direct haul by the applicants to and from the harbor, and that the number of such tracks is insufficient to accommodate the service applicants propose to provide. They insist that the present time schedule for trains moving over the South Shore is entirely too tight to permit the 24 additional operations, consisting of 2 trains a day in each direction by the applicants, to be coordinated in a manner so as to avoid overcrowding not only the yard tracks on the Port District property but also the single track leading into the port. The record shows that, if the applications are granted, the movements over the applicants' proposed route into the port will be more direct and will not involve occupation of the South Shore tracks for a longer period of time than at present. Direct delivery by the applicants entails less handling and, being in control of the entire movement to and from the port, applicants would be in position to expedite the shipments as the occasions demand. The pro-

posed operations also would be less expensive because of the elimination of the switching charges now absorbed on line-haul traffic. The physical characteristics of the line and port yard referred to by the interveners in opposition would not seriously interfere with the scheduled program of train operations contemplated to and from the port by the applicants.

Metropolitan Chicago.—The Chicago metropolitan area embraces about 3,617 square miles, and includes 5 counties in Illinois and 1 in Indiana. In addition to the city itself, the area contains approximately 180 suburban or satellite communities with a total of 14,500 manufacturing establishments employing some 2,800,000 people. The present population of the area is 6,250,000, which is expected to increase to approximately 7,900,000 persons by 1980.
[fol. 2330] During World War II and the postwar period, Chicago has had a tremendous expansion in industrial activity. Its manufacturing facilities produce a wide diversified assortment of commodities, the more important of which are iron and steel, machinery, fabricated metals, communication equipment, petroleum and coal products, electronic and railroad equipment, farm machinery, housewares, meat products, confectionery products, electrical appliances, and cosmetics.

Port of Chicago.—Under this classification and Corps of Engineers of the United States Army has included Chicago Harbor, Chicago River (main and north branch), Chicago River (south branch), Chicago Sanitary and Ship Canal, Calumet-Sag Channel, Lake Calumet, and Calumet Harbor and River. Development of the Great Lakes-St. Lawrence Seaway Project will permit most of the ocean-going vessels of the world to enter the Great Lakes and dock at the Port of Chicago. The present timetable calls for the deepening of the seaway to be completed in the fall of 1958 and ready for operation in the spring of 1959.

The Calumet-Sag Channel was constructed as a drainage outlet for the Calumet area. It is a valuable navigation

channel of such importance that the United States Government is in the process of widening it from 60 to 225 feet. This channel connects the Port District facilities and Lake Calumet with the Chicago Sanitary and Ship Canal at Sag Junction, and provides an adequate channel connection between the Great Lakes and the Mississippi River system. The project is scheduled for completion in 1961, although much of the widening already has been accomplished.

Lake Calumet Port is the major deep water port facility of the Port of Chicago. It is in the heart of the Chicago railroad switching district, and is contiguous to major arterial highways. Port District facilities and industries have unparalleled access to barge, rail, lake steamer, and [fol. 2331] motor transportation, and in the immediate future there will be complete access to ocean transportation.

The port of Chicago has been and will continue to be the major Great Lakes general cargo port insofar as export and import shipments are concerned. Also, beginning with the 1959 shipping season, that port will become a dominant export gateway for grain moving both direct to ports abroad and in some instances to Montreal for forwarding abroad.

Although Lake Calumet is not the exclusive port of the city of Chicago, based on the amount of steamship services now being provided into and out of the lake, the Lake Calumet tonnage for 1957 will be a much larger percentage of the port of Chicago total than is reflected in the 1956 figures. This is due to the fact that Lake Calumet was not open for service except for the last few months of the navigation season.

Growth of Chicago as an international port.—The first steamship company established regular overseas service between Chicago and European ports in 1933. In 1950, 80 vessels called at the port of Chicago, and, during 1956, 21 foreign lines made a total of 264 calls at the port. Export and import overseas traffic increased from 87,128 tons in 1950 to 237,206 tons in 1956. In addition, during the year

1955, 477,669 tons of traffic imported from Canada moved through the port of Chicago, and 1,122,160 tons moved through the port for exportation to Canada. The total water-borne traffic from and to the port of Chicago for the year 1955 was 71,490,510 tons, including overseas and Canadian export and import traffic as well as water-borne domestic traffic moving on the Great Lakes and on the Illinois waterways.

Position of the Port District.—The unequivocal policy of the Port District, as evidenced by a resolution adopted January 15, 1954, is that the public interest as well as the interests of prospective tenants and users of the Lake [fol. 2332] Calumet Harbor will be best served by making available to them all accessible railroad service on an equal basis, and under no circumstances that a monopoly or exclusive privilege shall be granted to any single railroad carrier to serve the Lake Calumet Harbor. Furthermore, it is the declared policy of the Port District to foster and attract railroad carriers which have a primary interest in the development of the harbor as a rail-truck-barge-ship interchange port.

The Lake Calumet Harbor area presents one of the greatest potentials for the generating of traffic in the mid-continent area of the United States. The facilities at the port were designed not only to handle import and export business but to serve as an intermediary for stopping in transit, and for warehousing. The bulk of the present facilities is being used for the interchange of intrastate and interstate business rather than import or export. The port is a public harbor open to all trucking companies, barge lines, and steamships. The addition of more railroads would in and of itself be a benefit and would improve conditions at the port, because the contact with more than one railroad would give the Port District greater availability of 1- and 2-line switches rather than the 3-line switches it now has.

Need for additional rail service.—The Port District's reasons for seeking additional railroad service into the Lake

Calumet area are (1) it wants more single-line rates and more two-line rates and the service resulting therefrom; (2) the Port District would have available a much larger supply of cars to handle the traffic destined to and from the port; (3) if, as now, the Rock Island alone served the port, the possibility of disruption in service because of labor differences or cessation of operation due to other causes would be lessened. The Port District wants all the service that it is possible to secure for the public facilities now or hereafter to be located at the port, because such service will [fol. 2333] be advantageous not only to the tenants at the port but is also essential for the proper overall development of the property. Emphasis is placed on the public nature of the facilities located at the port and their greater need for fast, dependable, and more abundant rail service than would be required by a single industry on one line of railroad.

Estimate of future traffic.—Applicants are of the opinion that, based upon conservative estimates of the port general manager, the rail traffic to and from the Lake Calumet port during the coming year would be approximately 27,000 carloads, which could easily increase to 76,500 carloads a year by 1962, to possibly 115,000 carloads a year by 1968 when the entire east side of the lake is expected to be fully developed, and to anywhere from 250,000 to 350,000 carloads a year when both sides of the lake are completely built up. Interveners in opposition question the accuracy of such estimates. They state that, because of the numerous imponderables involved, the rate of development of the port itself is indefinite, and that it is impossible to predict, with any degree of certainty, the volume of traffic which may be expected to move via the improved Calumet-Sag Channel and the St. Lawrence Seaway to the port of Chicago, much less to make an allocation of such traffic among the various subports, including Lake Calumet.

Some indication of future traffic through the port may be gleaned from the business generated in the immediate past. At the time of the hearing the port was in operation for a

relatively short period. Witnesses for the operators of the facilities of Lake Calumet Harbor were unanimous in forecasting material increases in the tonnages for the future. The present facilities at the lake are not expected to be utilized to capacity for several years, and large additions are planned for early construction. It is imperative, [fol. 2334] therefore, that at the very beginning of this new era of development a plan and system for handling the transportation needs of the port be established which will assure the type of service that is expected and will provide for steady progress and expansion. Admission of the applicants to the area will supply such needed service.

There are a number of factors to be considered in determining the amount of traffic which will be handled by Lake ports generally, by Lake Michigan ports, by the Chicago Port and finally by Lake Calumet Port. These factors include, among other things, the length of the navigation season on the Great Lakes, estimated to be some 7 or 8 months each year; the physical condition of navigation which restrict operations and make for hazards and delays; the effect of tolls upon the volume of traffic; the limited capacity of the Welland Canal; the potentialities of a two-way cargo suitable for carriage in line vessels; severity of competition existing between Great Lakes ports and ocean ports; preservation of existing channels of exports and imports, including opposition to rates which would equalize Great Lakes ports with seaports; competition between water carriers operating on the St. Lawrence Waterway, on the one hand, and other modes of transportation operating between mid-America and ocean ports, on the other; efficiency of operation of Great Lakes ports to overcome the established pattern of movement of exports and imports already established to and from ocean ports; the high cost of vessel operation through the St. Lawrence Waterway as compared with transportation to and from ocean ports; and, finally, political, military, and economic conditions at home and abroad.

The Middle West is a large processor and consumer of many items of foreign origin which can move by steamship

to Lake Calumet, thence by rail to final destination. Examples of just a few commodities in this category are [fol. 2335] canned and processed seafoods from Norway, Spain, and Portugal; woodpulp, wallboard, and paper from Sweden and Finland; dairy products from Denmark, Holland, Belgium and France; olices and olive oil from Italy, Spain, and the areas around the Mediterranean; cork from Spain, Portugal, and North Africa; beer, wine, and other liquors from France, Germany, Holland, Denmark, and the United Kingdom; and automobiles from Germany, France, Italy, and the United Kingdom.

Likewise, the importation of basic raw materials for processing and consumption within the United States is of considerable magnitude. To mention but a few such items, tin is imported from Bolivia and the Far East; chrome ore from Turkey, India, Africa and Cuba; manganese ore from Brazil; asbestos from Africa and eastern Canada; iron ore from Venezuela and eastern Canada; mahogany logs and lumber from Africa, the Philippine Islands, and Central America; sisal fiber from Africa, the West Indies, Central America, and Mexico; green coffee from Africa, South America, and Central America; cocoa from Africa and South America; jute and burlap from Pakistan; crude rubber from the Far East; and peet moss from Germany and Holland. Some of these items are now moving through Lake Calumet Harbor, and this area, in time, should handle all of them.

Approval of the instant applications would enable applicants to afford importers and exporters of these commodities fast and efficient transportation service to the facilities at Lake Calumet Harbor, and would enhance the volume of international traffic through the port of Chicago.

Great Lakes overseas freight conferences.—Three steamship conferences, operating under the Federal Maritime Board Authority, as required by section 15 of the Shipping Act of 1916, have a present membership of 14 steamship lines whose vessels are regularly engaged in direct operations between Great Lakes ports and the United Kingdom

ports, the Scandinavian-Baltic ports and the various ports [fol. 2336] within the Bordeaux-Hamburg range. Based on past experience in many American ports, the member lines definitely are of the opinion that Lake Calumet Port requires additional direct railroad connections needed to provide both increased cargo interchange facilities as well as access to a greater volume of inbound and outbound cargo that will justify the operation of larger vessels.

The cargo market, which the Great Lakes Overseas lines must serve through the port of Chicago in order to make operation of the larger vessels into and out of that port compensatory, includes the westerly limits at Salt Lake City, the southwesterly limits deep into Oklahoma, the southerly limits at Memphis, and the southeastern limits well into Tennessee. The lines already have active cargo operations through Milwaukee, Green Bay, Muskegon, Detroit, Toledo, Cleveland, Buffalo, and Oswego.

Up to the present time, by reason of canal and lock limitations in the upper St. Lawrence, the conference lines are restricted to vessels not exceeding 258 feet in length overall. These vessels, although capable of deeper loading, cannot be loaded below the 14-foot mark for passage through the present St. Lawrence locks eastbound and westbound. These little ships have a maximum capacity of 180,000 cubic feet and, when loaded with what would be regarded as a well assembled cargo, can receive up to 1,600-weight tons down to a draft of 14 feet. On outbound voyages these ships on arrival at Montreal can load 6 to 8 feet additional draft, giving them a full cargo of 2,600 to 2,800 tons.

When the St. Lawrence Seaway, with locks 800 feet long, is opened for the 1959 navigation season, and a draft of 27 feet is made available all the way from Montreal into the principal Great Lakes ports, there will be an important change in the size and capacity of the vessels engaged in Great Lakes overseas cargo transportation.

[fol. 2337] Whereas presently the ships cannot exceed 258 feet, the expectations are that beginning April 1959 the carriers using the enlarged St. Lawrence Seaway will

operate vessels about 400 to 450 feet in length. Against the present maximum cargo capacity of 180,000 cubic feet, the larger ships will have space for dry cargo totaling 350,000 cubic feet. In addition, they will have deep tanks ranging about 15,000 cubic feet and space for 30,000 to 35,000 cubic feet of refrigerated cargo.

With the improved seaway in operation, there will be more steamship lines operating in the Great Lakes overseas trade, which definitely indicates a need for access to a greater number of importers and a greater number of exporters if these more numerous and larger ships are to obtain cargo in sufficient volume to make their voyages compensatory. On the basis of an average of 40 cars to the thousand tons of freight, the larger vessels with capacity of 8 or 9 thousand tons will require about 350 cars coming in and 350 cars going out for each ship. When shed No. 1 is operating at capacity, with pier facilities serving 5 ships simultaneously, there will be a demand for 1,750 cars each inbound and outbound daily. Applicants and proprietary lines have a car supply equal to 30 times that of the Rock Island.

Scheduled sailings into and out of the port of Chicago during the navigable season 1957 increased almost 20 percent over the comparable period for 1956. The import picture reveals an increase from 41,964 net tons in 1952 to 115,791 tons in 1956. Exports from the port of Chicago have progressively increased year by year. In 1952, the port of Chicago exports totaled 51,369 net tons, while for the 1956 navigation season the export total was 121,415 net tons. The latter figure could have been substantially greater had there been a greater supply of small and suitable vessels available for operation in the Great Lakes overseas trade.

[fol. 2338] When the seaway is opened in April 1959, it will no longer be a question of vessel supply. The world merchant marine presently has slightly over 6,000 vessels that can navigate the enlarged St. Lawrence Seaway. These vessels total more than 25 million deadweight tons. If only

5 percent of these ships (approximately 300 vessels) came into the Great Lakes, making 2 to 3 trips a year, there would be 600 to 900 vessels coming into the port of Chicago each season. An efficient, economical interchange of cargo between the land carriers and the water carriers for such a volume of shipping will necessitate a substantially broadened railroad service into and out of the Lake Calumet port.

The larger general-cargo-carrying ships that will be coming into the Lake Calumet port will represent a capital investment ranging from $2,750,000 up to $5,000,000 per vessel. The loss of a single day in the turnaround of such a vessel is an important item of cost. A continued bad turnaround experience can cause a ship operator to undertake to divert cargo to some other port where a better turnaround experience is assured. Also, such a bad experience can be made up by higher ocean freight rates, but such a practice could readily put a port out of competition.

All charter parties contain a lay-day clause, which is the number of days the owner of the vessel agrees to make the vessel available for the receiving of cargo without charge. If the period of the lay-day clause is 5 days, from Monday through Friday, and the vessel did not arrive until Friday, it would be entitled to expect its cargo from the charter on Friday. This would result in an accumulation of cars to the extent of that cargo. All export freight requires a good staging arrangement of cars so as to feed the freight to the ship as required.

In international shipping operations, the traditional pattern is for vessels to load their cargoes at several ports [fol. 2339] and to discharge their cargoes at several ports. The continuity of ship loading and unloading is vitally requisite to maintenance of minimum turnaround time in port, and adherence to sailing schedule necessitates highly fluid railroad service for the delivery of export cars as required for the loading pattern and the placement and movement away from the port of import cars.

Good, efficient, and prompt service is always important in general business, but in the field of international commerce it is mandatory. Many overseas sales transactions are made on what are called letters of credit. For example, a buyer in France places an order for goods with a Chicago exporter and to cover the sale arranges with a French bank to place a sum of money in a Chicago bank, which the latter is to pay to the Chicago seller when the seller surrenders to the Chicago bank a steamship bill of lading showing that the goods in question are aboard a certain vessel. Such letters of credit almost invariably bear an expiration date and, if the goods are not aboard the ship or a steamship bill of lading has not been issued prior to such date, the Chicago bank will not pay the seller the money called for in the letter. Much inconvenience and sometimes loss of money to the seller is the result. To avoid responsibility for such situations, the railroads must exercise every effort to make delivery of goods entrusted to them at the dock in advance of the expiration date. Obviously, if the initial line or the inbound road-haul carrier can make such delivery direct to the steamship docks over its own rails without interchange with any other line, it should be in position to render the fastest possible service.

The same type of fast service is demanded by international traders on import traffic. The railroads, however, cannot move such freight until it has cleared customs. When the inland carrier is finally in position to move the [fol. 2340] freight, it is urged to do so with the greatest possible dispatch. This can be accomplished by furnishing empty equipment promptly upon availability of the freight and by moving it with the greatest speed that conditions permit with the least possible number of yard handlings.

Department of Agriculture.—The Secretary of Agriculture of the United States is interested in these proceedings in a dual capacity, first, by reason of the statutory mandate directing him to assist in improving transportation services and facilities for agricultural products and farm sup-

plies in connection with rates, charges, tariffs, etc., and, secondly, as a shipper in having adequate port facilities available for possible exportation of Government-owned agricultural products, principally grains.

The seven States of Indiana, Illinois, Iowa, Missouri, Kansas, Nebraska, and Colorado, by virtue of their relatively close geographical location to the port of Chicago will export, from all indications, a very substantial quantity of grain through that port. In 1956, this area produced 43 percent of all the wheat and 51 percent of all the corn grown in the United States. Substantially lower inland rates are in effect to Chicago from the producing points than are applicable to either the Atlantic or gulf ports. A comparison of the respective rates indicates that Chicago has a lower rate of 6 cents per 100 pounds on wheat shipped from Hutchinson, Kans., than is in effect to New Orleans, La., and 26½ cents per 100 pounds lower rate on corn from Des Moines, Iowa, origins. With respect to north Atlantic ports, the rate to the lowest-rated port is uniformly 32½ cents per 100 pounds over Chicago on both wheat and corn. In view of the existing disparity in rates, much grain may be expected to be diverted from Atlantic and gulf ports for movement via Chicago and the St. Lawrence Seaway, particularly since much of the export [fol. 2341] tonnage is destined to points in Europe. The benefits that should accrue to the grain shippers in the midwest as a result of the favorable location of Chicago with relation to the producing areas and the foreign markets could be nullified if insufficient transportation facilities to the dockside for large volumes of grain are not available. In this connection, service by a single railroad does not appear adequate for a major port, especially since most western railroads serving the midwest grain-producing States terminate at Chicago and have very extensive switching and classification yards which could be utilized in providing needed additional service to the port.

Rail service at other ports.—Applicants, especially those engaged in trunkline service, have had considerable experi-

ence in handling foreign commerce to, from, and through various ports within the United States. Practically every port along the east and west coasts, and the Gulf of Mexico, enjoys multiple railroad service either through extensive lighterage or other shipping arrangements for the direct handling of export and import freight to and from shipside, or by means of a terminal railroad, usually an independent belt line. Some industries at Great Lakes ports, including the port of Chicago are served by only one railroad, but in every instance where that is the case the industry so served is located on privately owned property, as distinguished from public property, or on land owned and developed at the expense of the railroad providing the exclusive service. Such a situation does not exist at Lake Calumet Harbor. The facilities there are licensed and operated as public elevators and warehouses, each competing with the other. The record is replete with the testimony of shippers and transportation men comparing the ports which enjoy competitive rail service with the ports restricted to the service of one railroad. Without doubt, multiple rail service is more desirable from the standpoint of efficient and economical service to the general public.

[fol. 2342] *Production of grain in tributary territory.*—The territory considered tributary to Chicago as a grain market produces 64 percent of all the wheat, 73 percent of the corn, 81 percent of the oats, 78 percent of the barley, and 80 percent of the soybeans grown in the United States. Within this area, which embraces some 14 States, are numerous interior terminals and subterminal markets that are dependent upon the primary Chicago market.

During the year 1956, the total receipts of grain at Chicago numbered 67,241 carloads, of which 84 percent came inbound over carriers, directly or indirectly applicants, and 5 percent were handled by the Rock Island and Nickel Plate. Most of this traffic moved outbound to the east. Studies of movements of grain to Chicago elevators indicate that numerous delays have occurred, particularly in

connection with the movements from the inspection tracks. Under existing law, Federal and State inspections must be made of each carload of grain shipped, and each railroad designates the track or tracks upon which such inspection takes place. This creates a problem, especially in the export trade. The experience of the grain operators is that the more a car has to be handled, the greater the time in transit. Classification, reclassification, handling, and rehandling to accomplish interchanges among railroads always take a longer time than when handled by a single carrier direct.

Crosstown switching.—Under the so-called Lowry Agreement of 1910, which was designed to bring about a unification of practices with respect to switching rates and rules to apply within the Chicago switching district, each road haul carrier operating to and from Chicago has been afforded the opportunity of reaching industries served by another railroad by the absorption of allowances of the terminal line. Prior to the Lowry agreement, a chaotic [fol. 2343] situation prevailed because of the lack of uniformity in the measure of the terminal carrier's switching charges and in the rules of road-haul carriers as to the absorption of such charges. The measure of allowances subscribed to under the agreement and absorbed by the road-haul carriers reflects a reciprocal idea and is applicable regardless of the length of service performed by the terminal line. The measure of allowances falls into two levels, with those received by the Rock Island on carload traffic generally, and on grain, being at the low level. Thus the terms under which the Rock Island must operate as a terminal line at the Lake Calumet port by reason of the Lowry agreement serve to give assurance that other rail carriers are and will be afforded an opportunity of reaching the port through switching arrangements and by reasonable switching rates.

If three railroads participate in a crosstown switching movement, the originating line gets 37½ percent, the inter-

mediate line gets 25 percent, and the delivering line gets 37½ percent of the revenue. The originating line does the switching at the origin point and carries the car to the point of interchange with the second carrier. The second carrier carries the car to point of interchange with the third carrier. The third carrier carries the car to the destination industry and performs the switching there.

On a two-line switching movement, the originating and terminating carriers each receives 50 percent of the revenue. The originating carrier performs switching at the point of origin and carries the car to the point of interchange. The second carrier receives 50 percent of the revenue and carries the car from point of interchange to the destination industry, and there switches the car.

In a one-line switching movement, the carrier performs the switching at the point of origin, carries the car to the destination and performs the switching at the destination industry, retaining the entire revenue from the movement. [fol. 2344] At the present time, and for the foreseeable future, many important crosstown movements of grain are and will be made in the Chicago switching district, and such movements constitute an important part of the grain business at Chicago. The record shows that the loaded crosstown movements from January 1 to August 31, 1957, amounted to 1,242 cars out of a total of 8,365 carloads to and from the port. Rates and charges covering shipments moving entirely within the Chicago switching district are based on a minimum of 60,000 pounds per car. At the present time, rates for service in the Chicago switching district are as follows: For a 1-line haul, 8½ cents per cwt., minimum per car $51; for a 2-line haul 9½ cents per cwt., minimum per car $57; and for a 3- or more line haul 10½ cents per cwt., minimum per car $63. There are a few exceptions to the rates so prescribed. On the basis of an average carload of wheat containing 1,813 bushels, charges on a crosstown switch of $92.43 for a single-line movement, $103.34 for a 2-line movement, and $114.22 for a 3-line movement would result. The Rock Island is willing to enter

into arrangements with other railroads to bring about a single level of rates for all intra-switching district traffic regardless of the number of railroads involved in the service.

Within the Chicago switching district are 4,405 industries served exclusively by one railroad, of which 202 are served by the Rock Island and 34 by the Nickel Plate. The Chicago Belt serves 377 industries exclusively for its own account, and the proprietors of the Chicago Belt, including the Illinois Central and the Pennsylvania, serve 1,489. The New York Central and its subsidiaries serve 656 industries exclusively. Indiana Harbor Belt serves 365 industries exclusively for its own account, and the Milwaukee and the North Western, two of the owners of the Indiana Harbor Belt, serve 1,288. If the applications herein are approved, [fol. 2345] an additional 1,917 industries in the Chicago switching district would receive direct single-line service to the port, and service to the balance of the industries therein would require at most a 2-line movement. The fact that the applicants will be providing line-haul services directly into the port will necessarily result in the elimination of the delays connected with the interchange of the cars between the line-haul carrier and the delivering carrier. It will also result in substantial savings by the applicants of switching charges presently absorbed on Rock Island deliveries. A witness for one of the industries now located at the port, testifying on behalf of the applicants, stated that the difference between single-line and multiple-line switching rates at Chicago could be sufficient to divert to the railroads some of the traffic now handled by trucks within the switching area. Furthermore, with additional railroads participating in providing direct service at the port, there would be a greater interest and incentive to make available to midwestern shippers and receivers of freight more favorable import and export rates.

Diversion of traffic and loss of revenues.—Service to the port by the applicants would result in a diversion of traffic

and consequent loss of revenues to the Rock Island. The extent of the loss would depend upon the volume of port traffic handled from year to year, and, as the volume increases, the amount susceptible to loss would be correspondingly greater. Based on the traffic handled in 1955, the Rock Island claims that the minimum annual loss of revenue to it upon approval of the applications would be $345,964. This estimate contemplates that the Rock Island would lose all the traffic it now handles exclusively within the port area. It is unlikely that such a situation can develop in view of the Rock Island's service record made since the inception of operations at the harbor and which has been maintained to the present time. It appears that the benefits to the shippers and receivers of freight to be [fol. 2346] served directly by the applicants outweigh any injury which might result to the Rock Island. The record herein demonstrates that the ability of the Rock Island to serve Lake Calumet Harbor and the public generally will not be impaired or lessened by the construction proposed by the applicants.

Prior litigation.—The Pullman Railroad and the Rock Island were the pioneers in the Lake Calumet Harbor area, the former having been there since about 1880. In Finance Docket No. 16252, *Pullman R. Co. Control, Etc.*, 275 I.C.C. 803, decided November 17, 1949 (not printed in full), hereinafter called the *Pullman case,* the Commission, division 4, among other things, authorized the Rock Island to acquire control of Pullman Railroad through purchase of all its issued and outstanding capital stock, and to lease the railroad properties of Pullman for an initial period of 5 years, subject to the usual conditions pertaining to the neutrality of service and the maintenance of operating practices then in existence between Pullman and its railroad connections. There is no evidence in this record indicating that the prescribed conditions ever have been violated. By supplemental report and order of January 20, 1955, 290 I.C.C. 802 (not printed in full), the term of the lease was extended

for an additional period of 10 years to January 1, 1965. Although they did not seek to be included in the stock control of Pullman, the Belt Railway's request for sole stock ownership and the Illinois Central's request for partition and purchase of that portion of the Pullman's properties south of 124th Street were denied.

In *Chicago Rock Island & Pacific Railroad Company Et Al.* v. *Illinois Commerce Commission, ex rel. Illinois Central Railroad Company Et Al. Appellants,* 414 Ill. 134, 111 N.E. 2d 136, hereinafter called the *State case,* the Supreme Court of Illinois denied a joint application filed March 20, 1947, by the Illinois Central and its wholly owned sub-
[fol. 2347] sidiary, Kensington & Eastern, with the Illinois Commerce Commission, seeking authority to construct a track from a point in the vicinity of 127th Street, across the tracks of Pullman and across Doty Avenue to Lake Calumet Harbor. The *Pullman case* and the *State case* contain statements of fact concerning the historical background of railroad service to and from the port area which need not be restated herein. The cited cases form the sole bases for the Rock Island's present exclusive service at the port, and are relied upon heavily as grounds for denial of the instant applications.

Additional authority required.—Interveners in opposition contend that the applicants, in addition to the authority requested in the pending applications, must obtain authority from the Commission under section 1(18) of the act to operate over the tracks of the Port District within the port area. At present, the Rock Island operates over those tracks pursuant to the provisions of a contract executed with the Port District. The contract does not confer exclusive rights in the Rock Island to serve the port, but reserves to the Port District the right to permit entrance on behalf of other railroads. Under the proposals herein, the applicants desire that they be accorded the same right from the Port District to operate on Port District property as is now enjoyed by the Rock Island.

During the course of the hearing the Port District, on October 8, 1957, requested the Nickel Plate to construct a track from its Calumet Yard down the east side of Lake Calumet to the site of a proposed tank farm to be located just north of the confluence of Calumet River and the lake. Nickel Plate emphasizes the fact that it has no intention of filing a section 1(18) application to serve the tank farm, because the construction involved would be purely an industrial spur and of such character as would not require approval by the Commission.

If the instant applications are approved, the situation prevailing on the property of the Port District would be [fol. 2348] the same as that which exists at Houston, Tex., in connection with the relationship between the Port Terminal Railroad Association and the Harris County Houston Ship Channel Navigation District, as described in the Commission's reports at 150 I.C.C. 402, 175 I.C.C. 417, 290 I.C.C. 83, and Finance Docket No. 19852, *Harris County Houston Ship Channel Navigation District Et Al. Acquisition, Etc.*, 295 I.C.C. ——, decided November 14, 1957 (not printed in full). It is recommended that the Commission require each and every railroad, now or hereafter authorized to serve the industries located on Port District property at Lake Calumet Harbor, to adhere to the principles enunciated and approved in the cases cited. In this manner the Commission would retain jurisdiction and control, as contemplated by the statute, over the rail operations conducted at the port. Much of the argument advanced on behalf of the interveners in opposition is premised on the proposition that, if the applicants are permitted to serve the port direct, the Rock Island and Nickel Plate automatically and permanently would be excluded therefrom unless they join in and become an integral part of the applicants' plan for service. The recommended condition would dispel any fears in this regard. The Commission should require that every railroad authorized to operate within the port shall have the opportunity to do so on an equal basis with every other railroad performing service therein.

Service to Calumet Harbor Terminals, Inc.—Early in 1957, the Pennsylvania purchased the properties of the Calumet Harbor Terminals, Inc., located at the junction of the Calumet River and Lake Calumet. The properties contained two separate parcels. One parcel consisted of 32 acres east of Stony Island Avenue, bounded on the north by Lake Calumet, on the east by the Calumet River, and on the south by 130th Street. On the west it is bounded by Stony Island Avenue and the property of the Port District. The second parcel consisted of 6 acres located west of Stony [fol. 2349] Island Avenue. This whole property is now served exclusively by the Rock Island, and is the only property bordering on Lake Calumet which, under its ultimate plan for development, would not be owned by the Port District.

The entire tract purchased by the Pennsylvania is now leased back to the Calumet Harbor Terminals, Inc., part on a long-term lease and part on a short-term lease. The long-term lease covers the north part of the larger parcel and the short-term lease the south part of the larger parcel and the 6-acre parcel. The short-term lease may be terminated on 90 days' notice.

The track which the Pennsylvania proposes to construct into the port cuts almost through the middle of the larger parcel of the Calumet Harbor Terminals' property. The Rock Island track enters the southwest corner of the tract and would be severed by the construction proposed by the Pennsylvania.

At the hearing, Pennsylvania stated that it expected to serve the Calumet Harbor Terminals, Inc., operations on the land owned by the Pennsylvania, but had not decided at that time whether it would permit the other applicants to serve this location. It has definitely determined, however, that Rock Island service to the facilities of Calumet Harbor Terminals, Inc., located on Pennsylvania-owned property, no longer would be permitted because, as was stated, the track providing such service would be useless as, if, and when the Pennsylvania is authorized to build into the port.

The position assumed by the Pennsylvania in this regard should not be countenanced. The record shows that the Rock Island was instrumental in locating Calumet Harbor Terminals, Inc., at Lake Calumet Harbor, and has cooperated extensively in developing its properties as a rail-water terminal. Rock Island service was a controlling factor which influenced the management of Calumet Harbor Terminals, Inc., to locate at its present site, and such location was an important consideration in Rock Island's determination to [fol. 2350] acquire stock control of the Pullman Railroad. No distinction should be drawn herein between the industries located on Port District property and those located on property owned by the Pennsylvania. Together, they constitute the initial phase of the planned growth and development of a large area to which additional rail service by the applicants, including the Pennsylvania, is sought. It is recommended that, if the instant applications are granted, the Commission impose a condition to assure that all industries now or hereafter located at Lake Calumet Harbor, whether they be situated on property owned by Port District or otherwise, should have available direct rail service not only by all applicants but also by the Rock Island and the Nickel Plate as well. How such service is to be attained is a problem to be resolved by the Commission retaining jurisdiction over the operations wholly within the Port District, as herein proposed.

Findings and conclusions.—Consideration of the entire record herein warrants the conclusion that the applications should be approved. Such approval would result in greater rail competition, better service, greater car supply, and lower rates for the industries on Port District property at Lake Calumet Harbor. The whole free enterprise system of the United States has grown and flourished on the basis of competition. Direct service to the port by the applicants would place them on a par with the Rock Island insofar as solicitation of originated grain traffic for export is concerned, and the applicants would retain control of their freight equipment made empty at the port, so that

such equipment could be returned in fast shuttle service to country elevators without loss of time required by interchange. Competition within reason, rather than monopoly, is in the public interest. *Construction of Line by Wenatchee Southern Ry. Co.*, 90 I.C.C. 237 (257).

The time has come when additional rail service at the port is required for the future development of the indus- [fol. 2351] tries now or hereafter to be located there. Better service to shippers and receivers of freight through the elimination of delays, by providing single-line hauls, or more direct hauls, is clearly in the public interest. It would be a detriment and hindrance to the full and complete development of Lake Calumet Harbor if it were limited to the service of a single trunkline railroad when so many adjacent railroads are available and willing to serve the port. Although the port is now served by approximately 100 common-carrier truck lines, and there is no restriction on the number of barges and ships permitted to serve the port, the Rock Island is the only railroad presently serving the port.

Congress, the courts and this Commission have placed a higher value on future convenience and necessity than on the convenience and necessity that presently might exist in section 1(18) construction proceedings. If the applicants can prove, as they have herein, that the proposed construction either presently or in the reasonably near future will be self-sustaining, or so nearly so as not unduly to burden interstate commerce, the Commission may issue a certificate authorizing the proposed construction. Transportation service which aids in the future development of a territory is in the public interest. *I.C.C.* v. *Oregon-Washington R. Co.*, 288 U.S. 14. Considering all the circumstances in these proceedings, particularly the expansion program now in progress at the port, the increased amount of rail traffic to be made available at the port warrants the additional service of the applicants. *Gulf, M. & O. R. Co. Construction*, 271 I.C.C. 541.

The Rock Island places too much emphasis on the effect of the Commission's decision in the *Pullman case*, and the

Court's opinion in the *State case.* The issues in those proceedings were entirely different from the determinations which must be made by the Commission in the instant applications. Changed conditions require that the situation with respect to railroad service at Lake Calumet Harbor [fol. 2352] be reappraised in the light of the evidence bearing upon the present and future public convenience and necessity.

Carriers have no legal right to exclusive occupancy of a territory. *Indian Valley R.R.* v. *United States,* 52 Fed. (2d) 485, and *Pennsylvania R. Co.* v. *United States,* 40 Fed. (2d) 921. The record herein is convincing that the applicants should have equal access with the Rock Island and the Nickel Plate to Lake Calumet Harbor, in the interest of public convenience and necessity. Compare *Operation of Port R. Facilities,* 154 I.C.C. 193.

Except for the Rock Island and the Nickel Plate, everyone appearing at the hearing supported the additional service at the port proposed by the applicants. Heretofore, the Commission has held that the interests of the shipper and those of its customers represent the public interest whose specific transportation requirements are sought to be satisfied. *Chesapeake & O. Ry. Co. Construction,* 267 I.C.C. 665 (681). The volume of traffic moving through the Lake Calumet Harbor facilities is steadily increasing, and the operators of such facilities, as well as the Port District, anticipate the traffic volume will multiply many times within the next few years because of the strategic location of the port and the added flow of import-export traffic generated by the opening, in 1959, of the St. Lawrence Seaway. A vast amount of railroad-yard space will be necessary for the expedited and efficient handling of such added traffic. The applicants have yard space in proximity to the port equal to 12 times that of the Rock Island. Whether the facilities of the Port District at Lake Calumet Harbor are public or private property is immaterial and need not be decided in these proceedings. The future needs of the port make it advisable and expedient that more than one railroad be permitted to serve the port in the future.

The service proposed by the applicants in the instant proceedings is not unlike that proposed by the Santa Fe at [fol. 2353] Long Beach Harbor considered by the Commission in *Atchison, T. & S. F. Ry. Co. Construction,* 261 I.C.C. 227. In that case the Commission referred to the decision in *Consolidation of Railroads,* 159 I.C.C. 522, and stated:

> Generally speaking, the terminal railroad properties, wherever located, automatically fall into the aggregation of terminal properties of which they are a part. * * * All terminal properties should be thrown open to all users on fair and equal terms so that every industry on whatever rails shall have access to all lines radiating from that terminal, and every line carrier reaching that terminal shall similarly have access to all terminal tracks within the terminal area. * * *
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> The unification of terminal properties everywhere should put an end to disputes * * * to the advantage alike of all railroads and all users of railroads. In the interest of efficient and economical operation and the free movement of traffic restrictions in service and discrimination in charges which have arisen from differences in local terminal situations should cease to be a feature of railroad operation.

The same conclusions are warranted on the record in the instant proceedings. Compare *City of Milwaukee* v. *Chicago & N. W. Ry. Co., supra,* decided November 15, 1950, which is directly in point. See also *Miami Municipal Railroad Extension,* 158 I.C.C. 169. The Commission should find that the public convenience and necessity require the service of the applicants at Lake Calumet Harbor.

Insofar as the Section 5(2) applications are concerned, the proposed transactions do not contemplate a guaranty or assumption of payment of dividends or fixed charges, and there will be no increase in total fixed charges. No other railroad has sought to be included in the proposals. While there is no indication that carrier employees will be adversely affected by approval of the applications, it is recom-

mended that conditions similar to those prescribed in *Chicago & N. W. Ry. Co. Merger,* 261 I.C.C. 672, be imposed for their protection.

Recommendations.—Subject to the condition with respect to the protection of railway employees, it is recommended that division 4 overrule the motions of interveners in opposition to dismiss the applications for want of jurisdiction, [fol. 2354] hold that it has jurisdiction over operation of lines of railroad located on the property of the Chicago Regional Port District, and find:

1. That the present and future public convenience and necessity require construction by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., and that acquisition of trackage rights by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and the Chicago South Shore and South Bend Railroad over the line to be constructed and certain existing tracks will be consistent with the public interest.

2. That acquisition of trackage rights by The Belt Railway Company of Chicago over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned, operated, or to be constructed by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, the Chicago South Shore and South Bend Railroad, and The Pennsylvania Railroad Company will be consistent with the public interest.

3. That acquisition of trackage rights by The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned or operated by the Illinois Central Railroad Company, the Kensington and Eastern Railroad

Company, the Chicago South Shore and South Bend Railroad, and The Pennsylvania Railroad Company will be consistent with the public interest.

It is further recommended that the application of The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company for authority to construct and operate a line of railroad from 126th Street, Chicago, to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., recorded [fol. 2355] in Finance Docket No. 19448, be dismissed.

An appropriate order should be entered.

[fol. 2813]

BEFORE THE INTERSTATE COMMERCE COMMISSION

VIM

March 5, 1959
F.D. No. 19538 et al.

Mr. Bruce Dwinell, Atty.
Rock Island Lines
1025 LaSalle Street Station
Chicago 5, Illinois

Dear Sir:

By order dated February 19, 1959, the petition of Chicago, Rock Island and Pacific Railroad Company for leave to file a reply to applicant's reply, in the above-numbered proceedings, was denied.

Returned herewith are the copies of said reply, the original being retained for the correspondence section of the above-numbered docket.

Respectfully,

Secretary.

Encls

[fol. 2815]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538[1]

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

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1. Certificate issued authorizing construction by the Illinois Central Railroad Company, the Kensington & Eastern Railroad Company, the Philadelphia, Baltimore & Washington Railroad Company, and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill.; and acquisition of trackage rights by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and the Chicago South Shore & South Bend Railroad over the line to be constructed and certain existing tracks, approved and authorized. Conditions prescribed.

2. Acquisition of trackage rights by the Belt Railway Company of Chicago over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned, operated, or to be constructed by the Illinois Central Railroad Company, the Kensington & Eastern Railroad Company, the Chicago South Shore & South Bend Railroad, and The Pennsylvania Railroad Company, approved and authorized. Conditions prescribed.

3. Acquisition of trackage rights by the Michigan Central Railroad Company, the New York Central Railroad

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[1] This report also embraces Finance Docket No. 19448, Michigan Central Railroad Company, Et Al., Construction, Etc.; Finance Docket No. 19742, Belt Railway Company of Chicago Trackage Rights, Etc.; and Finance Docket No. 19921, Michigan Central Railroad Company, Et Al., Trackage Rights.

Company, and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned or operated by the Illinois Central Railroad Company, the Kensington & Eastern Railroad Company, the Chicago South Shore & South Bend Railroad, and The Pennsylvania Railroad Company, approved and authorized. Conditions prescribed.

4. Application of the Michigan Central Railroad Company, the New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company for authority to construct and operate a line of railroad from 126th Street, Chicago, to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., Finance Docket No. 19448, dismissed.

5. Motions of interveners in opposition to dismiss the applications in Finance Docket Nos. 19538, 19742, and 19921, for want of jurisdiction, overruled.

[fol. 2816] William J. O'Brien, Jr., Joseph H. Wright, Robert H. Bierma, Richard A. Olson, Martin J. Keating, Edmund A. Schroer, Frank F. Vesper, Richard T. Cubbage, E. E. Boyner, F. C. Gagen, Robert H. Pratt, Floyd Stuppi, John B. Goodrich, and Eugene S. Davis for applicants.

Leonard M. Shinn and Joseph E. Quin for the Secretary of Agriculture of the United States, and the United States Department of Agriculture, interveners in support of the applications.

Joseph M. Arnold, John S. Burchmore, Robert N. Burchmore, A. J. Maurer, A. H. Schwietert, J. S. Chartrand and R. D. Erickson for other interveners in support of the applications.

Bruce Dwinell, John L. Bordes, John Guandolo and Thomas O. Broker for railroad interveners in opposition.

REPORT OF THE COMMISSION—Decided October 5, 1959

By the Commission:

Exceptions to the report proposed by the examiner were filed by the interveners in opposition, and the applicants replied. Oral argument was heard.

These proceedings involve the efforts of 6 operating railroads, subject to the provisions of part I of the Interstate Commerce Act, hereinafter called the act, to provide additional rail service to the Lake Calumet Harbor Port at Chicago, Ill., now served exclusively by the Pullman division of the Chicago, Rock Island & Pacific Railroad Company (Rock Island).[2]

By application filed October 22, 1956, in Finance Docket No. 19538, the Kensington and Eastern Railroad Company,[3] the Illinois Central Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company[3] and The Pennsylvania Railroad Company applied under section 1(18) of the act for authority to construct a line of railroad, approximately 1.431 miles, in Cook County, Ill. The initial segment of 2,900 feet, or 0.549 mile, would be constructed by the Kensington & Eastern at an estimated cost of $222,-[fol. 2817] 596; the next 630 feet, or 0.119 mile, would be built by the Illinois Central at an estimated cost of $35,886; and the final 4,030 feet, or 0.763 mile, would be constructed by the Pennsylvania in behalf of the Philadelphia, Baltimore & Washington at an estimated cost of $604,094. Each applicant is to finance its proposed construction from current funds available in their respective treasuries. The track will lead out from the westbound main line of the Kensington & Eastern at a point a short distance east of

[2] In this report, as throughout the record, the individual railroads sometimes will be referred to by the distinctive names in each corporate title, or by the designation shown in parentheses.

[3] The Kensington & Eastern and the Philadelphia, Baltimore & Washington are nonoperating companies. The former is owned by the Illinois Central, and the latter is leased by the Pennsylvania.

Doty Avenue and then extend east and north to a connection with the proposed track of Pennsylvania on land owned by the Pennsylvania. A portion of the Pennsylvania construction would be on property leased from the Chicago Regional Port District, hereinafter referred to as the Port District. The connection between the Illinois Central and the Pennsylvania segments would be made at about 130th Street, and the Pennsylvania track, in turn, would connect with the track owned by the Port District.

In the same application the Illinois Central, the Pennsylvania, and the Chicago, South Shore and South Bend Railroad (South Shore) seek authority under section 5(2) of the act for the acquisition of trackage rights over the line to be constructed and certain existing tracks over which it is necessary to operate in order to reach the Lake Calumet Harbor Port, hereinafter sometimes called the harbor or port. The railroad properties of the Kensington & Eastern are leased to and are operated by the South Shore. A crossover would be installed between the eastbound and westbound tracks of the Kensington & Eastern, immediately west of the connection with the track leading to the port, to enable trains coming to the harbor to cross from the eastbound to the westbound track of the Kensington & Eastern to enter the track leading to the port.

[fol. 2818] By application filed April 25, 1957, in Finance Docket No. 19742, The Belt Railway Company of Chicago (Belt Railway or Chicago Belt)[4] requests authority under section 5(2) of the act to acquire trackage rights over the Illinois Central, the Kensington & Eastern, the South Shore, and the Pennsylvania from a point on its line at or near 95th Street to a point on the railroad tracks of the Port District on the west side of Lake Calumet Harbor, near 130th Street.

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[4] Originally the Chicago Belt filed an application in Finance Docket No. 19391 for permission to construct a line of railroad to the property of the Port District. Upon motion of the Chicago Belt, its application to construct was dismissed without prejudice by our order dated January 25, 1957.

By application filed September 9, 1957, in Finance Docket No. 19921, The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company[5] applied for authority under section 5(2) of the act to acquire trackage rights on behalf of the New York Central and Indiana Harbor Belt over the lines of railroad owned or operated by Illinois Central, Kensington & Eastern, the South Shore, and the Pennsylvania leading to Lake Calumet Harbor Port.

A joint hearing on the applications was held at Chicago. The Board of Trade of the city of Chicago, the Chicago Association of Commerce and Industry, the Port District, the North Pier Terminal Company, the Calumet Harbor Terminals, the Packers Terminal Warehouse, and the Secretary of Agriculture of the United States intervened in support of the applications. The New York, Chicago & St. Louis Railroad Company (Nickel Plate), the Rock Island, and the [fol. 2819] Pullman Railroad Company[6] intervened in opposition. Unless otherwise indicated, all points hereinafter mentioned are in Illinois.

Jurisdiction.—On September 9, 1957, the interveners in opposition filed written motions to dismiss the applications in Finance Docket Nos. 19538, 19742, and 19921 under section 5(2) of the act for trackage rights over lines of railroad proposed to be constructed to serve Lake Calumet Harbor. The motions pointed out that the applicants, among other things, requested approval and authorization

[5] These same three applicants have pending in Finance Docket No. 19448 an application under section 1(18) of the act for authority to construct a line of railroad from 126th Street to the Lake Calumet Harbor Port of Chicago. In view of our findings herein, the construction application pending in Finance Docket No. 19448 will be dismissed.

[6] Because of the fact that Pullman is controlled through stock ownership and operated by the Rock Island under lease, their joint interests and actions herein will be considered and referred to as those of the Rock Island which, along with the Nickel Plate, sometimes will be called the interveners in opposition.

of trackage rights over the various segments of tracks proposed to be constructed by the applicants. The substance of the respective motions is that we do not have jurisdiction under the act to approve and authorize trackage rights over tracks which are not in existence. Section 5(2), they state, relates only to tracks "owned or operated" by a railroad carrier, and not to tracks proposed to be constructed in the future.

The authority requested by the applicants under section 1(18) to construct, and under section 5(2) for trackage rights, constitutes a single plan whereby each of them proposes to provide additional rail service to the facilities now located or hereafter to be located at Lake Calumet Harbor. Orderly procedure dictates that all applications required to effect the entire plan be heard simultaneously, particularly, as here, where the evidence to be presented in support of the construction and trackage rights is identical. Heretofore, we have authorized construction of a line of railroad and at the same time approved operation under trackage rights over the line to be constructed. See Finance Docket No. 18534, *Spartanburg Terminal Company Construction,* 295 I.C.C. —— (not printed in full), decided July 10, 1957, and *Arkansas & L. M. Ry. Co. Construction,* 290 I.C.C. 112, decided October 23, 1953. To the same effect [fol. 2820] compare *City of Milwaukee* v. *Chicago & N. W. Ry. Co.,* 279 I.C.C. 521, and Finance Docket No. 15925, *Northern Pacific Railway Company, Et Al. Trackage Rights, Etc.,* —— I.C.C. —— (not printed in full), decided September 28, 1948. In the light of the decisions cited, there appears no valid reason to require the applicants herein to approach the problem of providing additional service to the port in a manner other than has been presented by the pending applications. In our opinion, there is nothing in section 5(2) which restricts our jurisdiction to the consideration of applications covering existing facilities. The motions to dismiss the applications, therefore, will be overruled.

Objections to receipt of evidence.—At the opening of the hearing, counsel for the interveners in opposition objected to the introduction of any evidence relating to Lake Calumet Port traffic other than that moving in import and export commerce, on the ground that the scope of the various applications had been limited by certain pleadings filed in response to the intervening petitions on behalf of the Rock Island and the Nickel Plate. The purpose of the hearing was to develop all the facts pertaining to the public need for additional rail service to and from the port. The facilities already established and to be established at the port are to be used extensively in the handling of domestic as well as import and export traffic, and there appears no reason for limiting the kind of service to be performed by the applicants in the event their applications are granted. As a general rule, we will not restrict or limit the type of service to be performed by a rail carrier subject to part I of the act. See *Northeast Oklahoma R. Co. Construction,* 252 I.C.C. 273 (285).

The Rock Island also contended that evidence dealing with rate matters had no place in these proceedings and should have been excluded by the examiner. General matters in regard to rates, while not necessarily of controlling importance, are factors which may be considered along [fol. 2821] with all the other evidence in determining whether the public convenience and necessity require construction of a line of railroad into a particular area.

Representations of the applicants.—Numerous reasons are advanced by the applicants in support of the general proposition that the proposed construction, and operation under trackage rights, would comply fully with the public convenience and necessity requirement of section 1, and the consistency with the public interest provision of section 5, respectively, of the act. It is urged that for various and sundry reasons the industries now or hereafter located in the area comprising Lake Calumet Harbor must have the many advantages and benefits of applicants' service for fruition of the plans envisioned and in the process of being

executed, on schedule, by the Port District, and that the impelling need for the additional rail service at the port is due to the increased common-carrier traffic to become available for rail transportation upon completion of the St. Lawrence Seaway in 1959.

Contentions of the interveners in opposition.—The Rock Island and the Nickel Plate dispute practically every point advanced by the applicants in support of the applications. The Rock Island opposes the applications on the grounds, among others, that it is serving and will continue to serve adequately the Port District; that it proposes and is prepared to expend further sums of money to keep in a position to serve the port adequately; that it is capable of performing adequate service in the future to meet the rail transportation needs of the Port District; that it is entitled to retain the rail traffic of the Port District; that there is no reason sufficient in law for applicants' extension of their lines of railroad and operations to serve territory heretofore served exclusively and adequately by the Rock Island; that the expenditures of sums of money required to be spent by applicants to serve the Port District cannot be justified [fol. 2822] either in fact or in law; and that applicants' extension of their line of railroad and operations to serve territory heretofore served exclusively and adequately by the Rock Island cannot be supported by public convenience and necessity, could mean only a duplication of rail facilities, and would create unsound and uneconomic conditions in transportation.

It is the position of Nickel Plate that, because it and the Rock Island can furnish complete and adequate railroad service to the east and west sides, respectively, of Lake Calumet, the various applications in this proceeding should be denied. The Nickel Plate states that the applicants have failed to file appropriate applications for authority, so that even if the pending applications should be approved, contrary to established principles of proof, the applicants would still not be authorized to operate within the Port Dis-

trict. We are of the opinion that the Nickel Plate's contention in this regard is meritorious, and nothing herein is to be construed as authority to the applicants to operate over the tracks owned by, and located within, the Port District. The Nickel Plate can visualize nothing but general congestion, confusion, and a breakdown of transportation if the applicants are permitted to extend operations to the port area. Such contention will be considered more fully hereafter in this report.

Principal issues of fact.—Whether the additional service proposed by the applicants through construction of a new line of railroad is required by the public convenience and necessity, and whether operation under trackage rights as proposed is consistent with the public interest present numerous issues of fact which must be resolved in large measure from conflicting opinion evidence of experts, all well qualified to speak concerning matters within their particular fields. Voluminous findings of fact and conclusions, 114 of which are by the interveners in opposition alone, [fol. 2823] many bearing upon the same issue, are requested. Discussion will be confined to those points which are considered essential to the proper disposition of the applications.

Applicants and proprietaries.—Illinois Central serves 14 mid-America States with main lines extending from the shores of Lake Michigan to the Gulf of Mexico. Pennsylvania operates in the industrial northeastern section of the United States, excluding New England. The population of the 13 States served by it comprises more than 40 percent of the total population of the nation. The New York Central system is made up of approximately 11,000 miles of tracks situated in the northern and eastern portions of the United States and in the provinces of Ontario and Quebec, Canada. It parallels the St. Lawrence Seaway, and many of the important areas served by the New York Central in Illinois, Indiana, Ohio, and Michigan will use the Chicago Port as an ocean gateway.

Belt Railway is owned by the following 12 trunkline railroads serving Chicago: The Atchison, Topeka & Santa Fe Railway Company, Chesapeake & Ohio Railroad Company, Chicago & Eastern Illinois Railroad Company, Chicago, Burlington & Quincy Railroad Company, the Rock Island, Erie Railroad Company, Grand Trunk Western Railroad Company, Illinois Central, Monon Railroad Company, Wisconsin Central Railroad Company (operated by the Soo Line), the Pennsylvania, and the Wabash Railroad Company. The owner lines interchange cars directly with one another through the Chicago Belt facilities at Clearing Yard pursuant to the terms of an operating agreement entered into November 1, 1912. Under this agreement the 12 owner roads pay the cost of operating and maintaining the Belt Railway on a user basis. Regular tariff charges are applicable to other traffic handled by the Belt Railway. Belt Railway has a direct connection with each of its owning railroads, and with all other road-haul lines operating into and out of Chicago. It also connects directly with all [fol. 2824] switching lines in the Chicago switching district, except those of the Chicago Junction Railway and the Chicago Produce Terminal Company.

Clearing Yard is approximately 18.5 miles from the port. The operations of the Belt Railway fall into three main categories: (1) cars interchanged between owner lines; (2) cars interchanged between nonowner lines, or between Belt Railway owner lines and nonowner lines; and (3) cars switched for local industries. In 1954, the total number of cars handled by the Belt Railway was 1,829,526; in 1955, it handled 1,939,721 cars; and in 1956, there were 2,022,265 cars handled. The methods whereby cars are transferred via the medium of the Belt Railway are set out in detail in the record. At the present time, three classifications are made for the Rock Island: (1) at Clearing Yard for pull by Rock Island power to its Burr Oak Yard, approximately 12 miles from the port; (2) for industries in the South Chicago District, which the Chicago Belt delivers to the South Chicago Yard and which is pulled from there by Rock Island

power into its own adjacent yard; and (3) cars for the Pullman Railroad handled by Belt Railway from Clearing Yard to Pullman Junction and then into the Rock Island 97th Street Yard at a point immediately west of the north end of Lake Calumet.

Indiana Harbor Belt is one of the largest terminal switching carriers in the Chicago switching district. It operates 648 miles of track in Illinois and Indiana, and is owned 60 percent by the New York Central and 20 percent each by the Chicago & North Western Railway Company and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. The Indiana Harbor Belt has direct connections at 63 different points with all 31 trunk-line carriers serving Chicago.

South Shore extends from its western terminus at the Randolph Street station of the Illinois Central to its eastern terminus at South Bend, Ind., approximately 90 miles. The trackage from South Bend to the Indiana-Illinois State line is owned by South Shore. From the State line [fol. 2825] to Kensington station at 115th Street it is operated under a long-term or perpetual lease from the Kensington & Eastern. From the Kensington station to Randolph Street station, the operation is under a trackage agreement with the Illinois Central.

Rock Island facilities.—As a result of a sustained modernization program started in 1937, the Rock Island now has an up-to-date physical plant capable of providing efficient railroad service throughout its entire system. Since taking over operations of Pullman on January 1, 1950, the Rock Island has made and is making many improvements and betterments in the Chicago division, and other improvements and betterments are planned. The recommendations for improvements on the Chicago division include several projects, costing nearly $500,000, in the Chicago and South Chicago Calumet area yards alone. The present capacity of those yards is 4,981 cars, which can be expanded to a total of 9,733 cars. Rock Island's present entrance into the port area is from the south; it temporarily crosses Doty Avenue at grade because of highway construction in the

vicinity, but the railroad is constructing a single-track overhead entrance which may be expanded to two tracks later. This will be the Rock Island's permanent trackage into the Lake Calumet Port area from the south.

A track leading off the Pullman branch near 103d Street serves the garbage-disposal area at the northwest edge of Lake Calumet. This track crosses Doty Avenue near 107th Street extended. It is the plan of the Rock Island to adjust the route to serve the port area from the north and to connect into the Port District tracks which will parallel Doty Avenue on the west side of the lake. This connection would provide two-way service into the switching and service tracks of Lake Calumet Port.

[fol. 2826] No complaints of sufficient magnitude to be emphasized in the record have been made of Rock Island service to the industries at the port. This is particularly so since the filing of the applications when superior service with ample engines and crews was instituted and has been continued. Not only does the Rock Island have a flexible switching operation in the vicinity of the port, but its entire terminal operation is geared to provide a constant flow of cars into and out of the area without interfering with the work being performed by the engines pulling and setting cars at dockside or at the various transit sheds, warehouses, and elevators. It is prepared to furnish such additional service as may be required in the area. A proposed new yard with a capacity of 412 cars would be constructed by the Rock Island in the vicinity of 124th Street which would be used for switching and classifying cars for delivery to various railroad connections and to the port industries. From the south entrance of this proposed new yard to the Port District tracks would be a distance of approximately 7,400 feet. The Rock Island states that its plans for serving the port have been revised from time to time as developments required, and that such planning will continue to be flexible so as to meet traffic needs as they arise. The Rock Island maintains direct interchange facilities with 15 trunk-line carriers in the Chicago switching district.

The Rock Island operates approximately 7,600 miles of railroad lines in 14 States, serving vast areas and important gateways within the midwest and southwest. It is in a position to participate in volume traffic moving to or from the territory lying west of the Great Lakes and the Mississippi River to the Pacific Ocean and the Gulf of Mexico. In contrast to the position of some of the applicants herein, particularly the New York Central and the Pennsylvania, the Rock Island is complementary to and not competitive with the water route which will be responsible for development of additional future traffic at the port.

[fol. 2827] *Nickel Plate.*—Nickel Plate's line into Chicago parallels the eastern side of Lake Calumet, and is the nearest line of railroad to Lake Calumet on the east. Its Calumet Yard is located on the northeast side of the lake. All of the Nickel Plate's Chicago road trains and its interchange movements with other carriers originate and terminate at Calumet Yard. Exclusive of the area now in use for enginehouse facilities, yard classification tracks, coach yard, cleaning, repair and inspection tracks, there are 430 acres in this parcel.

The present capacity of Calumet Yard is 1,909 cars. There is room on this parcel for the construction of 2 additional yards, each with a capacity of 2,000 cars, and, by rearranging tracks, the present yard could accommodate an additional 800 cars. This would give a total capacity of 6,709 cars on the parcel, with 300 acres left over. Between 87th Street and 93d Street, Nickel Plate also owns land on which it could erect another yard with a capacity of 1,200 cars, giving it a total yard capacity of 7,909 cars. Without doubt, the Nickel Plate is ideally situated to provide service to the northern and eastern sides of the lake.

Port District.—The Chicago Regional Port District, a political subdivision, body politic, and municipal corporation, was created by an act of the State of Illinois Legislature, approved June 6, 1951. The duties of the Port District, generally stated, are to study existing harbor plans

and recommend improvements therein to meet changing business and commercial needs; to investigate and prepare plans for the development of the port facilities; to study and make recommendations for improvement of terminal and other facilities for the promotion of commerce; to acquire, own, construct, lease and maintain port and harbor, water and land terminal facilities; and to perform other acts to improve the port facilities for the handling of commerce in and through the Port District.

[fol. 2828] In 1957, the law was amended to restrict the area of the Port District to property owned by it in Lake Calumet and a small amount of adjacent property. Port District has the continuing power under existing law to borrow money for the purpose of acquiring, constructing, reconstructing, extending or improving terminals, terminal facilities, and port facilities, for acquiring any property and equipment useful for such purposes, and for acquiring necessary cash working funds.

In furtherance of the powers granted pursuant to the statute, the Port District issued and sold $24,000,000 of revenue bonds, the proceeds from which have been used to construct its first-stage development, consisting of dredging Lake Calumet, particularly the turning basin and slip No. 1 to deep-water specifications, construction of docks, grain elevators, Port District office, warehouse, transit sheds, and 14 miles of railroad track. All of the aforesaid facilities have been completed. These facilities were designed for the handling, warehousing, and stopping in transit of domestic freight as well as import and export business. It is the declared policy of the Port District to attract and utilize the services of all rail carriers which have a primary interest in the development of the Lake Calumet Harbor as a rail-truck-barge-ship interchange harbor.

In the spring of 1955, the Port District procured a quitclaim deed to the bed of Lake Calumet from the city of Chicago, in return for which the Port District paid the city $250,000. An amendment to the Port District act provided that all the facilities which the Port District was empowered

to create, as well as those which would be developed over a period of years, would, by law, be delivered into private hands for lease and operation. As a consequence, each facility in itself is a separate entity in the hands of a private operator.

[fol. 2829] The west side of Lake Calumet has been set aside for commercial purposes. At the present time the Port District has completed and has in operation two 6½-million-bushel grain elevators, three transit sheds comprising 300,000 square feet of space, a backup warehouse comprising 200,000 square feet, and 14 miles of railroad yard "hold" tracks. Transit shed No. 1 is leased to the North Pier Terminal Company; transit shed No. 2 is leased to Packers Terminal and Warehousing Company, and shed No. 3 is leased to the Calumet Harbor Terminals. The backup warehouse has been leased to North Pier Terminal and Calumet Harbor Terminals. Elevator No. 1 is leased to the Illinois Grain Company and the other elevator has been leased to the Rice Powell organization. These facilities are now served exclusively by the Rock Island, and all rail carriers reaching Chicago obtain ready access to them by the absorption of switching charges.

The "hold" tracks heading north behind the grain elevators within the Port District will accommodate from 250 to 300 cars. Those tracks, in part, will be called upon to meet the demands of both the inbound and outbound arrivals into the Port District. When those tracks are no longer able to accommodate the requirements of the elevators and sheds, additional trackage will be required. The additional trackage will not be constructed in the harbor area, because the Port District does not intend to make available any more hold yards as such in that area. It is not contemplated that additional hold tracks or storage-track facilities will be expanded, and any railroads serving the harbor area will be required to adhere to this physical requirement.

As for future development, the Port District hopes to inaugurate phase 2 of its development program, consisting

of the dredging of slips 2 and 3 and the construction of related structures on the southwestern and southeastern sides of the lake, for a distance of some 3,500 feet, within [fol. 2830] a year from the date of hearing, for completion in 18 months or 2 years. It is the hope of the Port District to complete development of the entire west side of the lake for commercial purposes within 10 years.

Proposed lease agreement between the Port District and the applicants.—The applicants have submitted a proposal to the Port District to lease the tracks and other facilities now or hereafter provided for railroad purposes. The railroads would pay the Port District rental for their use, and, at applicants' expense, maintain such tracks and facilities and provide the switching service necessary on such tracks to meet the requirements of the tenants of the port. The applicants have agreed among themselves that they would jointly provide engines to perform the switching service required by all the railroads within the port, furnish the personnel to maintain tracks and facilities, provide switching service, and perform such other railroad work or service that may be required therein. Each of the applicant railroads proposes to bring its cars to the port and receive cars therefrom on designated tracks in the Port District yard, from and to which tracks cars will be switched for each of the applicants to and from industries within the port by engines provided for such service. Maintenance of the tracks and facilities and switching operations would be under the supervision of an officer selected by the applicants, who would report to and be governed by directions of a board of managers composed of one representative of each of the railroads which are parties to the agreement with the Port District authorities. The maintenance of the tracks and facilities and the switching operation thereon within the port would be conducted as a joint facility, and each railroad would assume and bear a car-proportionate share of the expense incident to the maintenance and operation of such tracks and facilities,

in the same ratio that the number of loaded cars brought [fol. 2831] to and taken from the port by each applicant bears to the total number of loaded cars of all railroads during such month. As the volume of business increases at the port and the applicants deem it advisable to lease or purchase the locomotives and assign them to service within the port, each of them would advance, in equal proportion, the purchase price of such locomotives.

The Port District further would agree not to permit any other person, company, corporation, or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the Lake Calumet Harbor area, other than as presently covered by leases or contracts with the Pullman Company and the Philadelphia, Baltimore & Washington Railroad Company, except upon written approval from the applicants as lessees. We are of the opinion that this provision of the proposed lease agreement between the Port District and the applicants is objectionable because it would tend unduly to restrain competition. For this reason the condition should be eliminated. Additional service to the port area should be governed by the public convenience and necessity evidenced by a certificate from us upon appropriate application, and such additional service is not a question within the province of the applicants or the port authority, individually or collectively, to determine. Section 4 of the proposed agreement provides, among other things, that the Port District should provide such additional land and construct such additional tracks and facilities as may be requested by a majority of the applicants and add the cost of same to the valuation base on which the applicants would pay rental under the agreement. The applicants would agree, at their sole cost and expense, to operate the property as a joint facility and to maintain it and to furnish railroad service adequate to meet reasonable and practical requirements of industries which are tenants of the Port District. The applicants would agree to permit other railroads having physical connections with the property to become parties to the

proposed agreement upon receipt of written application from such other railroads, provided those railroads would agree to be bound by the terms and conditions of such [fol. 2832] agreement in the same manner as though they had been original parties to it.

The property would be leased to the applicants for an annual rental based on 5 percent of an agreed current valuation, provided that the total rental, payable in any calendar year, should not exceed an amount equivalent to $2 per car, loaded or empty, or locomotive handled to or from the property during such calendar year. The contract of lease would run for 20 years, with the option in the applicants for a renewal for 4 additional terms of 20 years each, on the same terms and conditions.

The joint facility agreement.—The proposed joint-facility agreement was subscribed to in principle by all the applicants on September 4, 1957. In and by the terms of the agreement, the applicants agreed among themselves, among other things, to perform all switching within the port properties under a joint-switching arrangement. Each applicant would furnish a diesel switching locomotive for 1-year periods, in rotation. Additional locomotives would be furnished in rotation, if required. Members of the engine and switching crews were to be selected from employees of the railroads. The applicants severally would perform track or other maintenance work and provide wrecking service on the port property. Following the initial development period, a manager would be appointed who would have charge over the operations of the railroad service on the port property. Each of the railroads would deliver its inbound cars to and receive its outbound cars from the Port District yard facilities which are to be leased and operated by the applicants as a joint-switching facility. All funds required for any facilities which the applicants might be required to provide would be funds advanced in equal proportions by each of them, and each railroad would have an undivided interest in such facilities with

each of the other railroads. All other costs and expenses incident to the joint arrangement would be allocated on the basis of use.

Trackage agreements.—Trackage agreements were entered into by applicants on various dates providing for the use by each of them of some of the tracks of the other applicants. The Illinois Central granted the Pennsylvania [fol. 2833] bridge rights over its main line between the junction with the Chicago Belt tracks at 95th Street, or the junction with the Pennsylvania tracks in the vicinity of Riverdale, and the junction with the Kensington & Eastern tracks near Kensington.

The Illinois Central, South Shore, and Kensington & Eastern have entered into an agreement, allowing the Pennsylvania bridge rights over the tracks of the Kensington & Eastern between Kensington and a point immediately west of the Calumet River. The Illinois Central has also entered into agreements granting the Pennsylvania and South Shore bridge rights over the tracks which it proposes to construct between the junction with the Kensington & Eastern tracks and the junction with the tracks of Pennsylvania, immediately west of the Calumet River, in the vicinity of 130th Street. All of these agreements are for the purpose of allowing the Pennsylvania to reach its property immediately west of the Calumet River.

In addition, the Illinois Central and South Shore have entered into agreements with the Pennsylvania granting bridge rights over tracks of Pennsylvania west of Calumet River, connecting tracks of Illinois Central, and those of the Port District.

Agreements have been entered into by the Chicago Belt, the Illinois Central, Kensington & Eastern, South Shore, and Pennsylvania, enabling the Chicago Belt to reach the property of the Port District by means of bridge rights over tracks of the Illinois Central from an existing connection of the Belt Railway with the Illinois Central tracks near 94th Street at Greenwood Avenue thence southerly

on the Illinois Central tracks to Kensington, thence over the Kensington & Eastern tracks from Kensington to a point east of Doty Avenue, where a new track is to be built by the Kensington & Eastern to a junction with new track to be built by the Illinois Central to connect with a track to be built by the Pennsylvania at the north side of 130th Street, just west of the Little Calumet River, thence over [fol. 2834] such Pennsylvania track to a connection with the tracks of the Port District.

Illinois Central, Kensington & Eastern, and South Shore have also entered into contracts with the New York Central (lessee of Michigan Central) and the Indiana Harbor Belt, under which the two lines last named are granted bridge rights jointly with other lines, as a tenant of the Illinois Central, over the tracks of the Kensington & Eastern from the junction of its tracks with those of the Michigan Central, near 124th Street, to the junction of its tracks with those of the Illinois Central east of Doty Avenue and west of the Calumet River. The Illinois Central granted a joint bridge right for the use of its tracks extending to the tracks of the Pennsylvania on the west bank of the Calumet River north of 130th Street, from which point these two roads, under agreement with the Pennsylvania, will use the Pennsylvania tracks to reach the tracks owned by the Port District.

These contractual arrangements have been made among the applicants with respect to trackage and bridge rights to reach the Port District tracks. The trackage to be used by the applicants will be multiple on the Illinois Central to Kensington, and double tracks from Kensington to the junction with the track leading off the Kensington & Eastern to the port. The track to be constructed will be a single track leading out of the elevated westbound main line of the Kensington & Eastern in an easterly direction to grade and then north under the present bridge spanning the Calumet River at 130th Street, thence north to the connection with the track to be built by the Pennsylvania. This single track will then extend in a northerly direction

along the west bank of the Calumet River, thence northwesterly across the property occupied by the Calumet Harbor Terminals, Inc., and owned by the Pennsylvania, to a connection with the Port District tracks. The main-line [fol. 2835] tracks of the Illinois Central and Kensington & Eastern are block-signaled and the junction at Kensington is protected by interlocker. The switches on the crossover between the two main tracks of the Kensington & Eastern and the connection with the single track leading down into the port will be operated by remote control.

All of the trackage agreements provide, among other things, that the right granted to use the tracks would be for the purpose of enabling the user to deliver and receive its freight traffic moving under its motive power in road haul or switch service to and from tracks as may now or hereafter be located within the area of the Port District, but, under the terms of the agreement, the user would have no right to use such tracks to deliver or receive any freight traffic to or from any industry presently or thereafter served exclusively by the owner of the track. The engines, cars, and trains of the user would move over the track or tracks designated by the owner carrier from time to time for such movements. Such tracks would at all times be under the control and management of the owner carrier and its duly authorized representative, and operations would be conducted on schedules and in accordance with orders and regulations prescribed by said representatives.

Trackage charges.—The agreements as originally executed provided for the following charge per car, loaded or empty (with one count for each diesel locomotive unit but no count for cabooses): For use of the Illinois Central main line $2; for use of the Kensington & Eastern $2; for use of the Illinois Central extension 25 cents; and for use of the Pennsylvania extension $2.50. Provision was made for reducing the charges for use of the Illinois Central main line and the Pennsylvania facilities by 50 percent

after 7,000 car counts per year. The charges were predicated on the amount of business anticipated at the time the agreements were drawn. However, evidence introduced [fol. 2836] at the hearing was to the effect that the amount of business previously anticipated was grossly underestimated, and that it now appears to applicants that a satisfactory revenue can be obtained by counting only loaded cars and locomotives, with no charge for cabooses, and no reduction of charges after 7,000 cars per year. Amended agreements to carry out this change have been filed with us since the close of the hearing.

Counsel for the Rock Island contends that the expense represented by charges for trackage rights and other charges involved in the operation by the applicants into the port will exceed the revenues to be derived from such service under applicable tariff provisions, and that we should not authorize an operation which can only result in deficits insofar as the applicants are concerned. The record shows that if direct service by the applicants to the port is permitted, the line-haul business, without doubt, will provide profitable operations for the applicants. As for the crosstown switching service, the charges to be assessed are indefinite, and no doubt will be adjusted to cover actual costs for the service provided. We are convinced, on this record, that the service to the port proposed by the applicants will not be improvident.

Applicants' plan of operation.—Witnesses on behalf of the applicants emphasize the fact that a large port handling ocean-going traffic cannot efficiently operate unless adequate supporting rail facilities are available. The combined yard capacity of the applicants is 61,601 cars, or more than 12 times that presently available to serve the port through the Rock Island. The Kensington Yard of the New York Central is located 1.5 miles from the port. It has a present car capacity of 792, but space is available to install tracks to accommodate more than 2,000 additional cars. The total running time from the Kensington Yard

to the port would be about 20 minutes. Under the plan, trains of the applicants would be on the tracks of the [fol. 2837] South Shore for approximately 5 to 8 minutes. Because Kensington Yard is immediately adjacent to the port facility, in the event of overtaxing of the Port District yard, it would be made available for use by all railroads entering the port.

The Illinois Central proposes to serve the port with its own trains from its Markham yard via its tracks to the junction with the Kensington & Eastern at Kensington, thence over the Kensington & Eastern and the single lead track to be constructed into the Port District yard. As time or the occasion may require, service would also be made from the Wildwood yard over a portion of the same route. It would be necessary to use the crossover from the eastbound main track to the westbound main track of the Kensington & Eastern to reach the single lead track to the port.

The Wildwood Yard of the Illinois Central is 3.8 miles and 35 minutes running time from the port. It has a capacity of 1,300 cars, which could be expanded to 4,000 cars. Markham Yard of the Illinois Central is 9 miles from the port, and the running time in each direction is approximately 1 hour. Its present car capacity is 9,050, and there is room available to expand to 13,300. Hawthorne Yard, capacity 550 cars, is 23.5 miles and Congress Street Yard, capacity 800 cars, is 16.3 miles from the port. Traffic from the west destined to the port would move through Hawthorne Yard to Congress Street and from there into the port with a running time of 3 hours. If a complete trainload from the west is destined to the port, it would move in much less time directly from Hawthorne to the port without being set out at Congress Street or Wildwood. Under the proposal, cars of the Illinois Central would be spotted at the port on the same day, or within 24 hours after arrival at Chicago.

[fol. 2838] Pennsylvania has two main trunk lines serving Chicago. First, the line from Chicago through Fort

Wayne, Ind., to Pittsburgh, Pa., and, secondly, the so-called Panhandle line through Logansport, Ind., to points south and east thereof. Within the Chicago switching district, the Fort Wayne line and the Panhandle line are connected at 3 places. The Pennsylvania has 3 major freight yards and 6 other supporting yards in the Chicago area.

Pennsylvania expects to serve the port area initially from Dolton Yard, capacity 570 cars, expandable to 1,000 cars, located on the Panhandle line due south of the port area at 159th Street. Except for the connection with the Illinois Central at Riverdale, the route from Dolton Yard to the port is over main tracks with signals and interlockings. The total distance is 9.3 miles, and the running time would be about 1 hour. If volume and service necessitate additional Pennsylvania operations to the port, it could also be served via the Fort Wayne line, Chicago Belt, Illinois Central, and the Kensington & Eastern from Colehour Yard, capacity 1,743 cars, expandable to 2,500 cars. The distance from Colehour Yard to the port over this route is 10.9 miles and the running time about 1½ hours. The location of existing Pennsylvania facilities with respect to the port area would make it possible to integrate the traffic to and from the port into its existing schedules, and the only additional crews required would be those to move the traffic in either direction between the port, on the one hand, and Dolton or Colehour Yards, on the other.

The New York Central has 3 trunk lines entering Chicago. The Northern District (Michigan Central) passes through Gibson Yard and terminates at Kensington Yard, approximately 1.5 miles west of the port. The Southern District (Big Four) enters Chicago over the Illinois Central's route from the south and moves over the Illinois Central tracks west of Kensington Yard. The Western [fol. 2839] District is the New York Central line near Lake Michigan which includes, from south to north, Indiana Harbor, South Chicago, and Englewood Yards, and terminates at LaSalle Street Station. The yards which the

New York Central proposes to use for Port District business are 4 in number with a combined present car capacity of 5,187, and all are within a distance of 20 miles from the port.

Inbound grain shipments are inspected at the Gibson Yard on the Indiana Harbor Belt, located approximately 10 miles from the port. Gibson Yard has a capacity of 6,260 cars and there is enough space available for an expansion to a total of 7,760 cars. The principal means of handling traffic of New York Central trains in service to the port are as follows:

1. Cars would be classified at Elkhart, Ind., and set out at Gibson, then moved to Kensington and into the port yard. Facilities recently placed in operation at Elkhart have reduced the detention time of cars held for classification from 24 to 8 hours.

2. Cars classified at Elkhart could be taken, if the volume warranted, directly to Kensington and then to the port yard.

3. If the volume was sufficient, cars at Gibson would be moved direct to the port yard.

4. Cars in Englewood Yard, about 19.5 miles from the port, would be taken either to the Chicago Junction, Ashland Avenue, or Leavitt Street Yard and then taken by the Chicago Junction to Kenwood and south over the Illinois Central to Kensington Yard and then by the New York Central to the Port District Yard.

5. Cars in the South Chicago and Indiana Harbor yards ordinarily would be moved to Gibson, then to Kensington, and finally to the port yard. The movement from the Kensington Yard to the port would be via a connection of the Michigan Central with the Kensington & Eastern in the vicinity of Kensington, thence over the latter to the track leading into the port.

[fol. 2840] There are 7 main yards, having a total present car capacity of 17,246, located along the line of the Indiana

Harbor Belt. Of these yards, 5, having a capacity of approximately 15,000 cars, are located less than 20 miles from the port. The Indiana Harbor Belt has access to the Kensington Yard of the New York Central. It also has trackage rights from the Kensington Yard across the Kensington & Eastern to a connection with the Pullman division of the Rock Island. The Indiana Harbor Belt proposes to handle the business in its own trains to and from the port by using yard facilities at Kensington. This business would be handled to the Kensington Yard over joint Michigan Central-Indiana Harbor Belt tracks from Gibson.

The Blue Island Yard of the Indiana Harbor Belt is the point of receipt for all western-line cars and the point of delivery to all eastbound and southbound carriers. Movement of trains from the Kensington Yard to the port would be the same as for the New York Central. If movements were to be made direct from Gibson Yard to the port, the trains would move over the Michigan Central to its connection with the Kensington & Eastern, thence into the port.

Movements to the port under the proposed trackage agreements would be handled by the Chicago Belt over Belt Railway tracks from Clearing Yard, capacity over 10,673 cars, to an existing connection with the Illinois Central tracks at Burnside, near 94th Street and Greenwood Avenue, thence southerly on the Illinois Central freight tracks to Kensington, thence over Kensington & Eastern tracks from Kensington to a point east of Doty Avenue, where the new track is to be placed to connect with the tracks of the Pennsylvania at the north side of 130th Street just west of the Little Calumet River, thence over Pennsylvania tracks to a connection with the tracks of the Port District. In the event of congestion at the port, Belt Railway cars could be held at Cragin Yard, capacity 1,000 cars, or its 22d Street Yard, capacity 1,400 cars. The [fol. 2841] running time from Cragin Yard to the port is estimated at approximately 3 hours.

The South Shore is the only applicant that would approach the port lead track from the east. The Port District would be served by South Shore in its own trains from Burnham Yard, approximately 4 miles from the port. Burnham Yard has a present car capacity of 400 cars, which could be expanded to about 750-car capacity. Service to the port would be made by means of the lead track extending from the westbound main track of the Kensington & Eastern into the port.

Movements from the port by the separate trains of the applicants would traverse the same routes taken by the trains of the same applicants to the port.

The method proposed by the applicants to reach and serve the port is the same as used in other similar areas. It is a common operating practice and is economical as well as practical. The joint-facility plan has many advantages, in that the switching operations required on the part of all the railroads within the port may be coordinated and performed by a joint switch engine or engines under the supervision and direction of the person so designated by the applicants without favoritism or discrimination. By the joint arrangement, cars of each of the railroads, as and when required by industries, could be placed at one spotting. There would be no duplication of switching, resulting in substantial saving in time and money, as cars would be loaded or unloaded more quickly and would be handled into and out of the port with greater dispatch than if all railroads in the port did their own switching.

Feasibility of applicants' proposed operations.—Interveners in opposition contend that the proposed operations of the applicants into the harbor area would create delays, congestion, and confusion in the movement of cars to and from Lake Calumet Port. They state that all movements [fol. 2842] by the applicants to and from the port would necessitate the use of tracks now handling a considerable volume of freight and passenger traffic, thereby increasing the density of traffic on and restricting the use of the tracks

now in service, the crossing of tracks and public highways at grade, operation through interlocker plants, backup movements, and the use of a single port-entry track under the 130th Street bridge with an undesirable curvature of 20 degrees, all of which would make impossible a coordinated and practical operation for the applicants into the port. Interveners in opposition point out that at present only 10 tracks are available in the port area to handle the additional traffic moving via direct haul by the applicants to and from the harbor, and that the number of such tracks is insufficient to accommodate the service applicants propose to provide. They insist that the present time schedule for trains moving over the South Shore is entirely too tight to permit the 24 additional operations, consisting of 2 trains a day in each direction by each operating applicant, to be coordinated in a manner so as to avoid overcrowding not only the yard tracks on the Port District property but also the single track leading into the port. The record shows that, if the applications are granted, the movements over the applicants' proposed route into the port will be more direct and will not involve occupation of the South Shore tracks for a longer period of time than at present. Direct delivery by the applicants entails less handling and, being in control of the entire movement to and from the port, applicants would be in position to expedite the shipments as the occasions demand. The proposed operations also would be less expensive because of the elimination of the switching charges now absorbed on line-haul traffic. The physical characteristics of the line and port yard referred to by the interveners in opposition would not seriously interfere with the sched- [fol. 2843] uled program of train operations contemplated to and from the port by the applicants.

Metropolitan Chicago.—The Chicago metropolitan area embraces 3,617 square miles, and includes 5 counties in Illinois and 1 in Indiana. In addition to the city itself, the area contains approximately 180 suburban or satellite com-

munities with a total of 14,500 manufacturing establishments employing some 2,800,000 people. The present population of the area is 6,250,000, which is expected to increase to approximately 7,900,000 persons by 1980.

During and since World War II, Chicago has had a tremendous expansion in industrial activity. Its manufacturing facilities produce a diversified assortment of commodities, the more important of which are iron and steel, machinery, fabricated metals, communication equipment, petroleum and coal products, electronic and railroad equipment, farm machinery, housewares, meat products, confectionery products, electrical appliances, and cosmetics.

Port of Chicago.—Under this classification, the Corps of Engineers of the United States Army has included Chicago Harbor, Chicago River (main and north branch), Chicago River (south branch), Chicago Sanitary and Ship Canal, Calumet-Sag Channel, Lake Calumet, and Calumet Harbor and River. Development of the Great Lakes-St. Lawrence Seaway Project will permit many of the ocean-going vessels of the world to enter the Great Lakes and dock at the Port of Chicago.

The Calumet-Sag Channel was constructed as a drainage outlet for the Calumet area. It is a valuable navigation channel of such importance that the United States Government is in the process of widening it from 60 to 225 feet. This channel connects the Port District facilities and Lake Calumet with the Chicago Sanitary and Ship Canal at Sag Junction, and provides an adequate channel connection between the Great Lakes and the Mississippi River system. [fol. 2844] The project is scheduled for completion in 1961, although much of the widening already has been accomplished.

Lake Calumet Port is the major deep water port facility of the Port of Chicago. It is in the heart of the Chicago railroad switching district, and is contiguous to major arterial highways. Port District facilities and industries have unparalleled access to barge, rail, lake steamer, and motor

transportation, and in the immediate future there will be complete access to ocean transportation.

The port of Chicago has been and will continue to be the major Great Lakes general cargo port insofar as export and import shipments are concerned. Also, beginning with the 1959 shipping season, that port will become a dominant export gateway for grain moving both direct to ports abroad and in some instances to Montreal for forwarding abroad.

Growth of Chicago as an international port.—The first steamship company established regular overseas service between Chicago and European ports in 1933. In 1950, 80 vessels called at the port of Chicago, and, during 1956, 21 foreign lines made a total of 264 calls at the port. Export and import overseas traffic increased from 87,128 tons in 1950 to 237,206 tons in 1956. In addition, during the year 1955, 477,669 tons of traffic imported from Canada moved through the port of Chicago and 1,122,160 tons moved through the port for exportation to Canada. The total water-borne traffic from and to the port of Chicago for the year 1955 was 71,490,510 tons, including overseas and Canadian export and import traffic as well as water-borne domestic traffic moving on the Great Lakes and on the Illinois waterways.

Position of the Port District.—The policy of the Port District, as evidenced by a resolution adopted January 15, 1954, is that the public interest as well as the interests of [fol. 2845] prospective tenants and users of the Lake Calumet Harbor will be best served by making available to them all accessible railroad service on an equal basis, and under no circumstances that a monopoly or exclusive privilege shall be granted to any single railroad carrier to serve the Lake Calumet Harbor. Furthermore, it is the declared policy of the Port District to foster and attract railroad carriers which have a primary interest in the development of the harbor as a rail-truck-barge-ship interchange port.

The Lake Calumet Harbor area presents one of the greatest potentials for the generation of traffic in the midcontinent area of the United States. The facilities at the port were designed not only to handle import and export business but to serve as an intermediary for stopping in transit, and for warehousing. The major portion of the present facilities is being used for the interchange of intrastate and interstate business rather than import or export. The port is a public harbor open to all trucking companies, barge lines, and steamships. The addition of more railroads would in and of itself be a benefit and would improve conditions at the port, because the contact with more than one railroad would give the Port District greater availability of 1- and 2-line switches rather than the 3-line switches it now has.

Need for additional rail service.—The Port District's reasons for seeking additional railroad service into the Lake Calumet area are (1) it wants more single-line rates and more two-line rates and the service resulting therefrom; (2) the Port District would have available a much larger supply of cars to handle the traffic destined to and from the port; (3) if, as now, the Rock Island alone served the port, the possibility of disruption in service because of labor differences or cessation of operation due to other causes would be enhanced. The Port District wants all the rail service that it is possible to secure for the public [fol. 2846] facilities now or hereafter to be located at the port, because such service not only will be advantageous to the tenants at the port but is considered essential for the proper overall devlopment of the property. Emphasis is placed on the public nature of the facilities located at the port and their need for fast, dependable, and more abundant rail service than would be required by a single industry on one line of railroad.

Estimate of future traffic.—Applicants are of the opinion that, based upon conservative estimates of the port general manager, the rail traffic to and from the Lake Calumet

port during the coming year would be approximately 27,000 carloads, which could easily increase to 76,500 carloads a year by 1962, to possibly 115,000 carloads a year by 1968 when the entire east side of the lake is expected to be fully developed, and to anywhere from 250,000 to 350,000 carloads a year when both sides of the lake are completely built up. Interveners in opposition question the accuracy of such estimates. They state that, because of the numerous imponderables involved, the rate of development of the port itself is indefinite, and that it is impossible to predict, with any degree of certainty, the volume of traffic which may be expected to move via the improved Calumet-Sag Channel and the St. Lawrence Seaway to the port of Chicago, much less to make an allocation of such traffic among the various subports, including Lake Calumet.

Some indication of future traffic through the port may be determined from the business generated in the immediate past. At the time of the hearing the port had been in operation for a relatively short period. Witnesses for the operators of the facilities at Lake Calumet Harbor were unanimous in forecasting material increases in the tonnages for the future. The present facilities at the lake are not expected to be utilized to capacity for several years, and large additions are planned for early construction. It [fol. 2847] is imperative, therefore, that at the very beginning of this new era of development a plan and system for handling the transportation needs of the port be established which will assure the type of service that is expected and will provide for steady progress and expansion. Admission of the applicants to the area will supply such needed service.

There are a number of factors to be considered in determining the amount of traffic which will be handled by Lake ports generally, by Lake Michigan ports, by the Chicago Port, and finally by Lake Calumet Port. These factors include, among other things, the length of the navigation season on the Great Lakes, estimated to be some 7 or 8 months each year; the physical condition of navigation

which restricts operations and makes for hazards and delays; the effect of tolls upon the volume of traffic; the limited capacity of the Welland Canal; the potentialities of a two-way cargo suitable for carriage in line vessels; severity of competition existing between Great Lakes ports and ocean ports; preservation of existing channels of exports and imports, including opposition to rates which would equalize Great Lakes ports with seaports; competition between water carriers operating on the St. Lawrence Waterway, on the one hand, and other modes of transportation operating between mid-America and ocean ports, on the other; efficiency of operation of Great Lakes ports to overcome the established pattern of movement of exports and imports already established to and from ocean ports; the high cost of vessel operation through the St. Lawrence Waterway as compared with transportation to and from ocean ports; and, finally, political, military, and economic conditions at home and abroad.

The Middle West is a large processor and consumer of many items of foreign origin which can move by steamship to Lake Calumet, thence by rail to final destination. Ex- [fol. 2848] amples of just a few commodities in this category are canned and processed seafoods from Norway, Spain, and Portugal; woodpulp, wallboard, and paper from Sweden and Finland; dairy products from Denmark, Holland, Belgium and France; olives and olive oil from Italy, Spain, and the areas around the Mediterranean; cork from Spain, Portugal, and North Africa; beer, wine, and other liquors from France, Germany, Holland, Denmark, and the United Kingdom; and automobiles from Germany, France, Italy, and the United Kingdom.

Likewise, the importation of basic raw materials for processing and consumption within the United States is of considerable magnitude. To mention but a few such items, tin is imported from Bolivia and the Far East; chrome ore from Turkey, India, and Cuba; manganese ore from Brazil; asbestos from Africa and eastern Canada; iron ore from

Venezuela and eastern Canada; mahogany logs and lumber from Africa, the Philippine Islands, and Central America; sisal fiber from Africa, the West Indies, Central America, and Mexico; green coffee from Africa, South America, and Central America; cocoa from Africa and South America; jute and burlap from Pakistan; crude rubber from the Far East; and peat moss from Germany and Holland. Some of these items are now moving through Lake Calumet Harbor, and this area, in time, should handle all of them.

Approval of the instant applications would enable applicants to afford importers and exporters of these commodities fast and efficient transportation service to the facilities at Lake Calumet Harbor, and would enhance the volume of international traffic through the port of Chicago.

Great Lakes overseas freight conferences.—Three steamship conferences, operating under the Federal Maritime Board Authority, as required by section 15 of the Shipping Act of 1916, have a present membership of 14 steamship [fol. 2849] lines whose vessels are regularly engaged in direct operations between Great Lakes ports and the United Kingdom ports, the Scandinavian-Baltic ports, and the various ports within the Bordeaux-Hamburg range. Based on past experience in many American ports, the member lines definitely are of the opinion that Lake Calumet Port requires additional direct railroad connections to provide both increased cargo interchange facilities as well as access to a greater volume of inbound and outbound cargo that will justify the operation of larger vessels.

The cargo market, which the Great Lakes Overseas lines must serve through the port of Chicago in order to make operation of the larger vessels into and out of that port compensatory, includes the westerly limits at Salt Lake City, the southwesterly limits deep into Oklahoma, the southerly limits at Memphis, and the southeastern limits well into Tennessee. The lines already have active cargo operations through Milwaukee, Green Bay, Muskegon, Detroit, Toledo, Cleveland, Buffalo, and Oswego

At the time of the hearing, by reason of canal and lock limitations in the upper St. Lawrence, the conference lines were restricted to vessels not exceeding 258 feet in length overall. These vessels, although capable of deeper loading, could not be loaded below the 14-foot mark for passage through the present St. Lawrence locks eastbound and westbound. These little ships have a maximum capacity of 180,000 cubic feet and, when loaded with what would be regarded as a well assembled cargo, can receive up to 1,600-weight tons down to a draft of 14 feet. On outbound voyages these ships on arrival at Montreal can load 6 to 8 feet additional draft, giving them a full cargo of 2,600 to 2,800 tons.

When the St. Lawrence Seaway, with locks 800 feet long, is opened for the 1959 navigation season, and a draft of 27 feet is made available all the way from Montreal into the principal Great Lakes ports, there will be an important [fol. 2850] change in the size and capacity of the vessels engaged in Great Lakes overseas cargo transportation.

Whereas under the conditions described the ships could not exceed 258 feet, the expectations were that beginning April 1959 the carriers using the enlarged St. Lawrence Seaway will be able to operate vessels about 400 to 450 feet in length. Against the present maximum cargo capacity of 180,000 cubic feet, the larger ships will have space for dry cargo totaling 350,000 cubic feet. In addition, they will have deep tanks ranging to about 15,000 cubic feet and space for 30,000 to 35,000 cubic feet of refrigerated cargo.

With the improved seaway in operation, there will be more steamship lines operating in the Great Lakes overseas trade, which definitely indicates a need for access to a greater number of importers and a greater number of exporters if these more numerous and larger ships are to obtain cargo in sufficient volume to make their voyages compensatory. On the basis of an average of 40 cars to a thousand tons of freight, the larger vessels with capacity of 8 or 9 thousand tons will require about 350 cars com-

ing in and 350 cars going out for each ship. When shed No. 1 is operating at capacity, with pier facilities serving 5 ships simultaneously, there will be a demand for 1,750 cars each inbound and outbound daily. Applicants and proprietary lines have a car supply equal to 30 times that of the Rock Island.

Scheduled sailings into and out of the port of Chicago during the 1957 navigable season increased almost 20 percent over the comparable period for 1956. The import picture reveals an increase from 41,964 net tons in 1952 to 115,791 tons in 1956. Exports from the port of Chicago have progressively increased year by year. In 1952, the port of Chicago exports totaled 51,369 net tons, while for the 1956 navigation season the export total was 121,415 net [fol. 2851] tons. The latter figure could have been substantially greater had there been a greater supply of small and suitable vessels available for operation in the Great Lakes overseas trade.

When the seaway is in operation, it will no longer be a question of vessel supply. The world merchant marine presently has slightly over 6,000 vessels that can navigate the enlarged St. Lawrence Seaway. These vessels total more than 25 million deadweight tons. If only 5 percent of these ships (approximately 300 vessels) came into the Great Lakes, making 2 to 3 trips a year, there would be 600 to 900 vessels coming into the port of Chicago each season. An efficient, economical interchange of cargo between the land carriers and the water carriers for such a volume of shipping will necessitate a substantially broadened railroad service into and out of the Lake Calumet port.

The larger general-cargo-carrying ships that will be coming into the Lake Calumet port will represent a capital investment ranging from $2,750,000 up to $5,000,000 per vessel. The loss of a single day in the turnaround of such a vessel is an important item of cost. A continued bad turnaround experience can cause a ship operator to undertake to divert cargo to some other port where a better

turnaround experience is assured. While such bad experience can be made up by higher ocean freight rates, such a practice could readily put a port out of competition.

All charter parties contain a lay-day clause, which is the number of days the owner of the vessel agrees to make the vessel available for the receiving of cargo without charge. If the period of the lay-day clause is 5 days, from Monday through Friday, and the vessel did not arrive until Friday, it would be entitled to expect its cargo from the charter on Friday. This would result in an accumulation of cars to the extent of that cargo. All export freight requires a good staging arrangement of cars so as to feed the freight to the ship as required.

[fol. 2852] In international shipping operations, the traditional pattern is for vessels to load their cargoes at several ports and to discharge their cargoes at several ports. The continuity of ship loading and unloading is vitally requisite to maintenance of minimum turnaround time in port, and adherence to sailing schedule necessitates highly fluid railroad service for the delivery of export cars as required for the loading pattern and the placement and movement away from the port of import cars.

Good, efficient, and prompt service is always important in general business, but in the field of international commerce it is mandatory. Many overseas sales transactions are made on what are called letters of credit. For example, a buyer in France places an order for goods with a Chicago exporter and to cover the sale arranges with a French bank to place a sum of money in a Chicago bank, which the latter is to pay to the Chicago seller when the seller surrenders to the Chicago bank a steamship bill of lading showing that the goods in question are aboard a certain vessel. Such letters of credit almost invariably bear an expiration date and, if the goods are not aboard the ship or a steamship bill of lading has not been issued prior to such date, the Chicago bank will not pay the seller the money called for in the letter. Much inconvenience and sometimes loss of money

to the seller is the result. To avoid responsibility for such situations, the railroads must exercise every effort to make delivery of goods entrusted to them at the dock in advance of the expiration date. Obviously, if the initial line or the inbound road-haul carrier can make such delivery direct to the steamship docks over its own rails without interchange with any other line, it would be in position to render the fastest possible service.

The same type of fast service is demanded by international traders on import traffic. The railroads, however, [fol. 2853] cannot move such freight until it has cleared customs. When the inland carrier is finally in position to move the freight, it is urged to do so with the greatest possible dispatch. This can be accomplished by furnishing empty equipment promptly upon availability of the freight and by moving it with the greatest speed that conditions permit, with the least possible number of yard handlings.

Department of Agriculture.—The Secretary of Agriculture of the United States is interested in these proceedings in a dual capacity, first, by reason of the statutory mandate directing him to assist in improving transportation services and facilities for agricultural products and farm supplies in connection with rates, charges, tariffs, etc., and, secondly, as a shipper in having adequate port facilities available for possible exportation of Government-owned agricultural products, principally grains.

The 7 States of Indiana, Illinois, Iowa, Missouri, Kansas, Nebraska, and Colorado, by virtue of their relatively close geographical location to the port of Chicago will export, from all indications, a very substantial quantity of grain through that port. In 1956, this area produced 43 percent of all the wheat and 51 percent of all the corn grown in the United States. Substantially lower inland rates are in effect to Chicago from the producing points than are applicable to either the Atlantic or gulf ports. A comparison of the respective rates at the time of the hearing indicates that Chicago has a lower rate of 6 cents per 100 pounds on wheat shipped from Hutchinson, Kans., than is

in effect to New Orleans, La., and 26½ cents per 100 pounds lower rate on corn from Des Moines, Iowa, origins. With respect to north Atlantic ports, the rate to the lowest-rated port is uniformly 32½ cents per 100 pounds over Chicago on both wheat and corn. In view of the existing disparity in rates, much grain may be expected to be diverted from Atlantic and gulf ports for movement via Chicago and the [fol. 2854] St. Lawrence Seaway, particularly since much of the export tonnage is destined to points in Europe. The benefits that should accrue to the grain shippers in the midwest as a result of the favorable location of Chicago with relation to the producing areas and the foreign markets could be nullified if insufficient transportation facilities to the dockside for large volumes of grain are not available. In this connection, service by a single railroad does not appear adequate for a major port, especially since most western railroads serving the midwest grain-producing States terminate at Chicago and have very extensive switching and classification yards which could be utilized in providing needed additional service to the port.

Rail service at other ports.—Applicants, especially those engaged in trunkline service, have had considerable experience in handling foreign commerce to, from, and through various ports within the United States. Practically every port along the east and west coasts, and the Gulf of Mexico, enjoys multiple railroad service either through extensive lighterage or other shipping arrangements for the direct handling of export and import freight to and from shipside, or by means of a terminal railroad, usually an independent belt line. Some industries at Great Lakes ports, including the port of Chicago are served by only one railroad, but in every instance where that is the case the industry so served is located on privately owned property, as distinguished from public property, or on land owned and developed at the expense of the railroad providing the exclusive service. Such a situation does not exist at Lake Calumet Harbor. The facilities there are licensed and

operated as public elevators and warehouses, each competing with the other. The record is replete with the testimony of shippers and transportation men comparing the ports which enjoy competitive rail service with the ports restricted to the service of one railroad. Without doubt, in connection with facilities of the magnitude here involved, [fol. 2855] multiple rail service is more desirable from the standpoint of efficient and economical service to the general public.

Production of grain in tributary territory.—The territory considered tributary to Chicago as a grain market produces 64 percent of all the wheat, 73 percent of the corn, 81 percent of the oats, 78 percent of the barley, and 80 percent of the soybeans grown in the United States. Within this area, which embraces some 14 States, are numerous interior terminals and subterminal markets that are dependent upon the primary Chicago market.

During the year 1956, the total receipts of grain at Chicago numbered 67,241 carloads, of which 84 percent came inbound over carriers, directly or indirectly applicants, and 5 percent were handled by the Rock Island and Nickel Plate. Most of this traffic moved outbound to the east. Studies of movements of grain to Chicago elevators indicate that numerous delays have occurred, particularly in connection with the movements from the inspection tracks. Under existing law, Federal and State inspections must be made of each carload of grain shipped, and each railroad designates the track or tracks upon which such inspection takes place. This creates a problem, especially in the export trade. The experience of the grain operators is that the more a car has to be handled, the greater the time in transit. Classification, reclassification, handling, and rehandling to accomplish interchanges among railroads always take a longer time than when handled by a single carrier direct.

Crosstown switching.—Under the so-called Lowry Agreement of 1910, which was designed to bring about a unification of practices with respect to switching rates and rules

to apply within the Chicago switching district, each road haul carrier operating to and from Chicago has been afforded the opportunity of reaching industries served by another railroad by the absorption of allowances of the terminal line. Prior to the Lowry agreement, a chaotic [fol. 2856] situation prevailed because of the lack of uniformity in the measure of the terminal carrier's switching charges and in the rules of road-haul carriers as to the absorption of such charges. The measure of allowances subscribed to under the agreement and absorbed by the road-haul carriers is applicable regardless of the length of service performed by the terminal line. The measure of allowances falls into two levels, with those received by the Rock Island on carload traffic generally, and on grain, being at the low level. Thus the terms under which the Rock Isand must operate as a terminal line at the Lake Calumet port by reason of the Lowry agreement serve to give assurance that other rail carriers are and will be afforded an opportunity of reaching the port through switching arrangements and by reasonable switching rates.

If three railroads participate in a crosstown switching movement, the originating line gets 37½ percent, the intermediate line gets 25 percent, and the delivering line gets 37½ percent of the revenue. The originating line does the switching at the origin point and carries the car to the point of interchange with the second carrier. The second carrier carries the car to point of interchange with the third carrier. The third carrier carries the car to the destination industry and performs the switching there.

On a two-line switching movement, the originating and terminating carriers each receives 50 percent of the revenue. The originating carrier performs switching at the point of origin and carries the car to the point of interchange. The second carrier receives 50 percent of the revenue and carries the car from point of interchange to the destination industry, and there switches the car.

In the one-line switching movement, the carrier performs the switching at the point of origin, carries the car to the

destination and performs the switching at the destination industry, retaining the entire revenue from the movement. [fol. 2857] At the present time, and for the foreseeable future, many important crosstown movements of grain are and will be made in the Chicago switching district, and such movements involve an important part of the grain business at Chicago. The record shows that the loaded crosstown movements from January 1 to August 31, 1957, amounted to 1,242 cars out of a total of 8,365 carloads to and from the port. Rates and charges covering shipments moving entirely within the Chicago switching district are based on a minimum of 60,000 pounds per car. At the present time, rates for service in the Chicago switching district are as follows: For a 1-line haul, 8½ cents per cwt., minimum per car $51; for a 2-line haul 9½ cents per cwt., minimum per car $57; and for a 3- or more line haul 10½ cents per cwt., minimum per car $63. There are a few exceptions to the rates so prescribed. On the basis of an average carload of wheat containing 1,813 bushels, charges on a crosstown switch of $92.43 for a single-line movement, $103.34 for a 2-line movement, and $114.22 for a 3-line movement would result. The Rock Island is willing to enter into arrangements with other railroads to bring about a single level of rates for all intraswitching district traffic regardless of the number of railroads involved in the service.

Within the Chicago switching district are 4,405 industries served exclusively by one railroad, of which 202 are served by the Rock Island and 34 by the Nickel Plate. The Chicago Belt serves 377 industries exclusively for its own account, and the proprietors of the Chicago Belt, including the Illinois Central and the Pennsylvania, serve 1,489. The New York Central and its subsidiaries serve 656 industries exclusively. Indiana Harbor Belt serves 365 industries exclusively for its own account, and the Milwaukee and the North Western, two of the owners of the Indiana Harbor Belt, serve 1,288. If the applications herein are approved, an additional 1,917 industries in the Chicago switching dis- [fol. 2858] trict would receive direct single-line service to

the port, and service to the balance of the industries therein would require at most a 2-line movement. The fact that the applicants will be providing line-haul services directly into the port will necessarily result in the elimination of the delays connected with the interchange of the cars between the line-haul carrier and the delivering carrier. It will also result in substantial savings by the applicants of switching charges presently absorbed on Rock Island deliveries. A witness for one of the industries now located at the port, testifying on behalf of the applicants, stated that the difference between single-line and multiple-line switching rates at Chicago could be sufficient to divert to the railroads some of the traffic now handled by trucks within the switching area. Furthermore, with additional railroads participating in providing direct service at the port, there would be a greater interest and incentive to make available to midwestern shippers and receivers of freight more favorable import and export rates.

Diversion of traffic and loss of revenues.—Service to the port by the applicants would result in a diversion of traffic and consequent loss of revenues to the Rock Island. The extent of the loss would depend upon the volume of port traffic handled from year to year, and, as the volume increases, the amount susceptible to loss would be correspondingly greater. Based on the traffic handled in 1955, the Rock Island claims that the minimum annual loss of revenue to it upon approval of the applications would be $345,964. This estimate contemplates that the Rock Island would lose all the traffic it now handles exclusively within the port area. It is unlikely that such a situation would develop in view of the Rock Island's service record made since the inception of operations at the harbor and which has been maintained to the present time. It appears that the benefits to the shippers and receivers of freight to be served directly by [fol. 2859] the applicants outweigh any injury which might result to the Rock Island. The record herein demonstrates that the ability of the Rock Island to serve Lake Calumet

Harbor and the public generally will not be impaired substantially by the construction proposed by the applicants.

Prior litigation.—The Pullman Railroad and the Rock Island were the pioneers in the Lake Calumet Harbor area, the former having been there since about 1880. In Finance Docket No. 16252, *Pullman R. Co. Control, Etc.,* 275 I.C.C. 803, decided November 17, 1949, (not printed in full), hereinafter called the *Pullman case,* the Commission, division 4, among other things, authorized the Rock Island to acquire control of Pullman Railroad through purchase of all its issued and outstanding capital stock, and to lease the railroad properties of Pullman for an initial period of 5 years, subject to the usual conditions pertaining to the neutrality of service and the maintenance of operating practices then in existence between Pullman and its railroad connections. There is no evidence in this record indicating that the prescribed conditions ever have been violated. By supplemental report and order of January 20, 1955, 290 I.C.C. 802 (not printed in full), the term of the lease was extended for an additional period of 10 years to January 1, 1965. Although they did not seek to be included in the stock control of Pullman, the Belt Railway's request for sole stock ownership and the Illinois Central's request for partition and purchase of that portion of the Pullman's properties south of 124th Street were denied.

In *Chicago Rock Island & Pacific Railroad Company Et Al.* v. *Illinois Commerce Commission, ex rel. Illinois Central Railroad Company Et Al. Appellants,* 414 Ill. 134, 111 N.E. 2d 136, hereinafter called the *State case,* the Supreme Court of Illinois affirmed denial of a joint application filed March 20, 1947, by the Illinois Central and its wholly owned subsidiary, Kensington & Eastern, with the Illinois Com- [fol. 2860] merce Commission, seeking authority to construct a track from a point in the vicinity of 127th Street, across the tracks of Pullman and across Doty Avenue to Lake Calumet Harbor. The *Pullman case* and the *State case* contain statements of fact concerning the historical

background of railroad service to and from the port area which need not be restated herein. The cited cases form the sole bases for the Rock Island's present exclusive service at the port, and are relied upon heavily as grounds for denial of the instant applications.

Additional authority required.—Interveners in opposition contend that the applicants, in addition to the authority requested in the pending applications, must obtain authority from us under section 1(18) of the act to operate over the tracks of the Port District within the port area. At present, the Rock Island operates over those tracks pursuant to the provisions of a contract executed with the Port District. The contract does not confer exclusive rights in the Rock Island to serve the port, but reserves to the Port District the right to permit entrance on behalf of other railroads. Under the proposals herein, the applicants desire that they be accorded the same right from the Port District to operate on Port District property as is now enjoyed by the Rock Island.

During the course of the hearing the Port District, on October 8, 1957, requested the Nickel Plate to construct a track from its Calumet Yard down the east side of Lake Calumet to the site of a proposed tank farm to be located just north of the confluence of Calumet River and the lake. Nickel Plate emphasizes the fact that it has no intention of filing a section 1(18) application to serve the tank farm, because the construction involved would be purely an industrial spur and of such character as would not require approval by the Commission.

[fol. 2861] If the instant applications are approved, the situation prevailing on the property of the Port District would be the same as that which exists at Houston, Tex., in connection with the relationship between the Port Terminal Railroad Association and the Harris County Houston Ship Channel Navigation District, as described in *Operation Over Tracks of Houston P. T. R. Asso.*, 150 I.C.C. 402, *Texas & N. O. R. Co. Operation*, 175 I.C.C. 417, *Harris*

County Houston Ship Channel Nav. Dist. Operation, 290 I.C.C. 83, and Finance Docket No. 19852, *Harris County Houston Ship Channel Navigation District Et Al. Acquisition, Etc.,* 295 I.C.C. ——, decided November 15, 1957 (not printed in full). We are of the opinion that operation by the applicants into the Port District, as proposed, constitutes an extension of a line of railroad requiring our prior approval, and is not merely an industrial spur contemplated by the exemption contained in section 1(22) of the act.

Service to Calumet Harbor Terminals, Inc.—Early in 1957, the Pennsylvania purchased the properties of the Calumet Harbor Terminals, Inc., located at the junction of the Calumet River and Lake Calumet. The properties contained two separate parcels. One parcel consists of 32 acres east of Stony Island Avenue, bounded on the north by Lake Calumet, on the east by the Calumet River, and on the south by 130th Street. On the west it is bounded by Stony Island Avenue and the property of the Port District. The second parcel consists of 6 acres located west of Stony Island Avenue. This whole property is now served exclusively by the Rock Island, and is the only property bordering on Lake Calumet which, under its ultimate plan for development, would not be owned by the Port District.

[fol. 2862] The entire tract purchased by the Pennsylvania is now leased back to the Calumet Harbor Terminals, Inc., part on a long-term lease and part on a short-term lease. The long-term lease covers the north part of the larger parcel and the short-term lease the south part of the larger parcel and the 6-acre parcel. The short-term lease may be terminated on 90 days' notice.

The track which the Pennsylvania proposes to construct into the port cuts almost through the middle of the larger parcel of the Calumet Harbor Terminals' property. The Rock Island track enters the southwest corner of the tract and would be severed by the construction proposed by the Pennsylvania.

At the hearing, Pennsylvania stated that it expected to serve the Calumet Harbor Terminals, Inc., operations on

the land owned by the Pennsylvania, but had not decided at that time whether it would permit the other applicants to serve this location. It has definitely determined, however, that Rock Island service to the facilities of Calumet Harbor Terminals, Inc., located on Pennsylvania-owned property, no longer would be permitted because, as was stated, the track providing such service would be useless as, if, and when the Pennsylvania is authorized to build into the port.

The position assumed by the Pennsylvania in this regard cannot be countenanced. The record shows that the Rock Island was instrumental in locating Calumet Harbor Terminals, Inc., at Lake Calumet Harbor, and has cooperated extensively in developing its properties as a rail-water terminal. Rock Island service was a controlling factor which influenced the management of Calumet Harbor Terminals, Inc., to locate at its present site, and such location was an important consideration in Rock Island's determination to acquire stock control of the Pullman Railroad. No distinction should be drawn herein between the industries located on Port District property and those located on property [fol. 2863] owned by the Pennsylvania. Together, they constitute the initial phase of the planned growth and development of a large area to which additional rail service by the applicants, including the Pennsylvania, is sought. Our certificate and order herein will include an appropriate condition to assure that each and every industry now or hereafter located on Lake Calumet Harbor, whether they be situated on property owned by the Port District or on the property owned by the Pennsylvania shall have available direct rail service not only by all applicants but also by the Rock Island and the Nickel Plate as well.

Findings and conclusions.—Consideration of the entire record herein warrants the conclusion that the applications should be approved. Such approval would result in greater rail competition, better service, greater car supply, and lower rates for the industries on Port District property at Lake Calumet Harbor. Direct service to the port by the

applicants would place them on a par with the Rock Island insofar as solicitation of originated grain traffic for export is concerned, and the applicants would retain control of their freight equipment made empty at the port, so that such equipment could be returned in fast shuttle service to country elevators without loss of time required by interchange.

The time has come when additional rail service at the port is required for the future development of the industries now or hereafter to be located there. Better service to shippers and receivers of freight through the elimination of delays, by providing single-line hauls, or more direct hauls, is clearly in the public interest. It would be a detriment and hindrance to the full and complete development of Lake Calumet Harbor if it were limited to the service of a single trunkline railroad when so many adjacent railroads are available and anxious to serve the port. Although the port is now served by approximately 100 common-carrier truck lines, and there is no restriction on the number of barges and ships permitted to serve the port, the Rock Island is the only railroad presently serving the port.

[fol. 2864] Congress, the courts, and this Commission have placed a higher value on future convenience and necessity than on the convenience and necessity that presently might exist in section 1(18) construction proceedings. If the applicants can prove, as they have herein, that the proposed construction either presently or in the reasonably near future is necessary to meet a public need, and will be reasonably profitable, we may issue a certificate authorizing the proposed construction. Transportation service which aids in the future development of a territory is in the public interest. *I.C.C.* v. *Oregon-Washington R. Co.*, 288 U.S. 14. Considering all the circumstances in these proceedings, particularly the expansion program now in progress at the port, and the increased amount of rail traffic to be made available at the port, we are of the opinion that the addi-

tional service of the applicants is warranted. *Gulf, M. & O. R. Co. Construction,* 271 I.C.C. 541.

The Rock Island places too much emphasis on the effect of our decision in the *Pullman case,* and the Court's opinion in the *State case.* The issues in those proceedings were entirely different from the determinations which must be made on the instant applications. Changed conditions require that the situation with respect to railroad service at Lake Calumet Harbor be reappraised in the light of the evidence bearing upon the present and particularly the future public convenience and necessity.

Carriers have no legal right to exclusive occupancy of a territory. *Indian Valley R.R.* v. *United States,* 52 Fed. (2d) 485, and *Pennsylvania R. Co.* v. *United States,* 40 Fed. (2d) 921. The record herein is convincing that the applicants should have equal access with the Rock Island and the Nickel Plate to Lake Calumet Harbor, in the interest of public convenience and necessity. Compare *Operation of Port R. Facilities,* 154 I.C.C. 193.

[fol. 2865] Except for the Rock Island and the Nickel Plate, everyone appearing at the hearing supported the additional service at the port proposed by the applicants. Heretofore, we have held that the interests of the shipper and those of its customers represent the public interest whose specific transportation requirements are sought to be satisfied. *Chesapeake & O. Ry. Co. Construction,* 267 I.C.C. 665 (681). The volume of traffic moving through the Lake Calumet Harbor facilities is steadily increasing, and the operators of such facilities, as well as the Port District, anticipate the traffic volume will multiply many times within the next few years because of the strategic location of the port and the added flow of import-export traffic generated by the opening of the St. Lawrence Seaway. A vast amount of railroad-yard space will be necessary for the expedited and efficient handling of such added traffic. The applicants have yard space in proximity to the port equal to 12 times that of the Rock Island. Whether the facilities of the Port District at Lake Calumet Harbor

are public or private property is immaterial and need not be decided in these proceedings. The future needs of the port make it advisable and expedient that more than one railroad be permitted to serve the port in the future.

The service proposed by the applicants in the instant proceedings is not unlike that proposed by the Santa Fe at Long Beach Harbor considered by us in *Atchison, T. & S. F. Ry. Co. Construction,* 261 I.C.C. 227. In that case reference was made to the decision in *Consolidation of Railroads,* 159 I.C.C. 522, and it was stated:

> Generally speaking, the terminal railroad properties, wherever located, automatically fall into the aggregation of terminal properties of which they are a part. * * * All terminal properties should be thrown open to all users on fair and equal terms so that every industry on whatever rails shall have access to all lines radiating from that terminal, and every line carrier reaching that terminal shall similarly have access to all terminal tracks within the terminal area. * * *
> [fol. 2866] The unification of terminal properties everywhere should put an end to disputes * * * to the advantage alike of all railroads and all users of railroads. In the interest of efficient and economical operation and the free movement of traffic restrictions in service and discrimination in charges which have arisen from differences in local terminal situations should cease to be a feature of railroad operation.

The same conclusions are warranted on the record in the instant proceedings. Compare *City of Milwaukee* v. *Chicago & N. W. Ry. Co., supra,* decided November 15, 1950, which is directly in point. See also *Miami Municipal Railroad Extension,* 158 I.C.C. 169. We find that the public convenience and necessity require the service of the applicants at Lake Calumet Harbor. Our certificate and order will provide that the construction herein authorized shall be commenced on or before June 30, 1960, and shall be completed on or before June 30, 1961.

Insofar as the Section 5(2) applications are concerned, the proposed transactions do not contemplate a guaranty or assumption of payment of dividends or fixed charges, and there will be no increase in total fixed charges. No other railroad has sought to be included in the proposals. While there is no indication that carrier employees will be adversely affected by approval of the applications, our authorization herein will include conditions similar to those prescribed in *Chicago & N. W. Ry. Co. Merger,* 261 I.C.C. 672, for their protection.

We find that we have jurisdiction over the proposed construction and operation of lines of railroad located on the property of the Chicago Regional Port District, and over the proposed acquisitions of trackage rights over the lines of railroad hereinabove described.

We further find, subject to the aforementioned condition with respect to the protection of railway employees, and the further conditions (a) that the proposed agreement between the applicants and the Port District be amended to provide that the Port District may permit any other person, company, corporation, or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the Lake Calumet Harbor area, if such construction, lease or operation is approved by us, and to eliminate any requirement for approval thereof by the [fol. 2867] other parties to the agreement, and (b) prior to exercise of the authority herein granted The Pennsylvania Railroad Company shall undertake and agree that, unless and until approved by this Commission, it shall not terminate or otherwise interfere with the right of the Chicago, Rock Island & Pacific Railroad Company to operate over existing tracks situated on the property owned by The Pennsylvania Railroad Company and acquired from the Calumet Harbor Terminals, Inc.:

1. That the present and future public convenience and necessity require construction by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Com-

pany, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., and that acquisition of trackage rights by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and The Chicago, South Shore and South Bend Railroad over the line to be constructed and certain existing tracks will be consistent with the public interest, *provided, however,* and the authority herein is granted upon the express condition that each and every industry now or hereafter located at Lake Calumet Harbor, whether they be situated on property owned by the Chicago Regional Port District or on the property owned by The Pennsylvania Railroad Company shall have available direct rail service not only by all applicants but also by the Chicago, Rock Island and Pacific Railroad Company and the New York, Chicago and St. Louis Railroad Company as well, if the latter carriers desire to provide service thereto.

2. That acquisition of trackage rights by The Belt Railway Company of Chicago over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned, operated, or to be constructed by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, the [fol. 2868] Chicago, South Shore and South Bend Railroad, and The Pennsylvania Railroad Company will be consistent with the public interest.

3. That acquisition of trackage rights by The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned or operated by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad, and The Pennsylvania Railroad Company will be consistent with the public interest.

4. That the application of The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company for authority to construct and operate a line of railroad from 126th Street, Chicago, to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., filed in Finance Docket No. 19448, should be dismissed.

An appropriate certificate and order will be issued.

Commissioner Freas, dissenting:

It seems clear that no present need for additional service has been established here. Concededly, however, a clear showing of a need for the proposed service in the reasonably foreseeable future would be adequate to support the required statutory findings. In my opinion, such a showing has not been made on this record.

Commissioners Arpaia, Walrath and Herring did not participate.

[fol. 2869]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19448

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Construction, etc.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Trackage Rights.

CERTIFICATE AND ORDER—October 5, 1959

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require construction by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., described in the report aforesaid: *Provided, however,* that the construction herein authorized shall be commenced on or before June 30, 1960, and shall be completed on or before June 30, 1961;

It is ordered, That the Illinois Central Railroad Company and The Pennsylvania Railroad Company shall report, in writing, the commencement and completion of the construction authorized herein within 15 days after such commencement and completion, respectively;

It is further ordered, That the Illinois Central Raliroad Company and The Pennsylvania Railroad Company, when filing schedules establishing rates and charges applicable over the line herein authorized to be constructed, shall in such schedules refer to this certificate and order by date and docket number;

[fol. 2870] *It is further ordered,* That if the authorization to construct herein granted is exercised, the Kensington and Eastern Railroad Company, the Illinois Central Railroad Company and The Pennsylvania Railroad Company shall submit two copies of the journal entries showing the construction of the line for the consideration and approval of this Commission;

It is further ordered, That, subject to the conditions for the protection of railway employees referred to in said report, acquisition by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and the Chicago, South Shore and South Bend Railroad over the line herein authorized to be constructed, and certain existing tracks described in the report aforesaid, upon the terms and condi-

tions in said report found just and reasonable, be, and it is hereby, approved and authorized; *provided, however,* and this certificate and order is issued upon the express conditions (a) that the proposed agreement between the applicants and the Chicago Regional Port District be amended to provide that the Chicago Regional Port District may permit any other person, company, corporation, or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the Lake Calumet Harbor area, if such construction, lease, or operation is approved by us, and to eliminate any requirement for approval thereof by the other parties to the agreement, and (b) prior to exercise of the authority herein granted The Pennsylvania Railroad Company shall undertake and agree that, unless and until approved by this Commission, it shall not terminate or otherwise interfere with the right of the Chicago, Rock Island and Pacific Railroad Company to operate over existing tracks situated on the property owned by The Pennsylvania Railroad Company and acquired from the Calumet Harbor Terminals, Inc.

It is further ordered, That, subject to the foregoing conditions, acquisition of trackage rights by The Belt Railway Company of Chicago over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned, operated or to be constructed by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad, and The Pennsylvania Railroad Company described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby approved and authorized;

It is further ordered, That, subject to the foregoing conditions, acquisition of trackage rights by The Michigan Central Railroad Company, The New York Central Railroad Company and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the Lake Calumet Harbor Port of Chicago owned or operated by the Illinois

Central Railroad Company, the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad and The Pennsylvania Railroad Company described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

And it is further ordered, That the application of The Michigan Central Railroad Company, The New York Central Railroad Company and the Indiana Harbor Belt Railroad Company, recorded in Finance Docket No. 19448, for authority to construct and operate a line of railroad extending from 126th Street to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., be, and it is hereby, dismissed.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 2871]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19448

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Construction, etc.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Trackage Rights.

CORRECTED CERTIFICATE AND ORDER—October 5, 1959

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require construction by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., described in the report aforesaid: *Provided, however,* that the construction herein authorized shall be commenced on or before June 30, 1960, and shall be completed on or before June 30, 1961;

It is ordered, That the Illinois Central Railroad Company and The Pennsylvania Railroad Company shall report, in writing, the commencement and completion of the construction authorized herein within 15 days after such commencement and completion, respectively;

It is further ordered, That the Illinois Central Railroad Company and The Pennsylvania Railroad Company, when filing schedules establishing rates and charges applicable over the line herein authorized to be constructed, shall in such schedules refer to this certificate and order by date and docket number;

It is further ordered, That if the authorization to construct herein granted is exercised, the Kensington and Eastern Railroad Company, the Illinois Central Railroad Company and The Pennsylvania Railroad Company shall submit two copies of the journal entries showing the construction of the line for the consideration and approval of this Commission;

[fol. 2872] *It is further ordered,* That, subject to the conditions for the protection of railway employees referred to in said report, acquisition by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and the Chicago, South Shore and South Bend Railroad of trackage rights over the line herein authorized to be constructed, and certain existing tracks described in the report aforesaid, upon the terms and conditions in said report

found just and reasonable, be, and it is hereby, approved and authorized; *provided, however,* and this certificate and order is issued upon the express conditions (a) that the proposed agreement between the applicants and the Chicago Regional Port District be amended to provide that the Chicago Regional Port District may permit any other person, company, corporation, or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the Lake Calumet Harbor area, if such construction, lease, or operation is approved by us, and to eliminate any requirement for approval thereof by the other parties to the agreement and (b) prior to exercise of the authority herein granted The Pennsylvania Railroad Company shall undertake and agree that, unless and until approved by this Commission, it shall not terminate or otherwise interfere with the right of the Chicago, Rock Island and Pacific Railroad Company to operate over existing tracks situated on the property owned by The Pennsylvania Railroad Company and acquired from the Calumet Harbor Terminals, Inc.

It is further ordered, That, subject to the foregoing conditions, acquisition of trackage rights by The Belt Railway Company of Chicago over lines of railroad leading to the Lake Calumet Harbor Port of Chicago, owned, operated or to be constructed by the Illinois Central Railroad Company, the Kensington and Eastern Railroad Company, the Chicago, South Shore and South Bend Railroad, and The Pennsylvania Railroad Company described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby approved and authorized;

It is further ordered, That, subject to the foregoing conditions, acquisition of trackage rights by The Michigan Central Railroad Company, The New York Central Railroad Company and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the Lake Calumet Harbor Port of Chicago owned or operated by the Illinois Central Railroad Company, the Kensington and Eastern Railroad

Company, the Chicago, South Shore and South Bend Railroad and The Pennsylvania Railroad Company described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

And it is further ordered, That the application of The Michigan Central Railroad Company, The New York Central Railroad Company and the Indiana Harbor Belt Railroad Company, recorded in Finance Docket No. 19448, for authority to construct and operate a line of railroad extending from 126th Street to the Lake Calumet Harbor Port of Chicago, in Cook County, Ill., be, and it is hereby, dismissed.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 2955]

BEFORE THE INTERSTATE COMMERCE COMMISSION

(Letterhead of Illinois Central Railroad,
Chicago 5, Illinois.)

November 19, 1959

Mr. Bruce Dwinell
Vice President
Chicago, Rock Island & Pacific Railroad
LaSalle Street Station
Chicago 5, Illinois

Mr. T. O. Broker
Assistant General Counsel
New York, Chicago & St. Louis Railroad
Terminal Tower
Cleveland 1, Ohio

Gentlemen:

Pursuant to the report and order of the Interstate Commerce Commission in F. D. No. 19538, et al., a meeting of representatives of all railroads authorized to serve the

facilities at Lake Calumet Harbor will be held on December 9 at 10:00 AM in my office, Room 706, Central Station, Chicago, to discuss the lease with the Chicago Regional Port District covering railroad operations over the Port's tracks.

Since there is no lease covering the tracks at the present time and because of the Commission's directive to amend the lease proposed by applicants, you, as well as the six applicants, are cordially invited to participate as parties in interest.

Best regards,

/s/ J. M. Trissal

cc: Mr. Harold D. McCoy, Secretary
Interstate Commerce Commission

Chicago Regional Port District

[fol. 2958]

Before the Interstate Commerce Commission

Nickel Plate Road
The New York, Chicago and St. Louis Railroad Company

Law Department

P. O. Box 6119
Cleveland 1, Ohio

December 7, 1959

File: 4.5282.3

Mr. J. M. Trissal
Vice President and
Chief Engineer
Illinois Central Railroad Company
135 East Eleventh Place
Chicago 5, Illinois

Dear Mr. Trissal:

Please refer to your letter of November 19, 1959 to Mr. Dwinell and me, inviting us to a meeting with "representa-

tives of all railroads authorized to serve the facilities at Lake Calumet Harbor" to be held on December 9, 1959 at your office. The stated purpose of your letter is "to discuss the lease with the Chicago Regional Port District covering railroad operations over the Port's tracks", there being "no lease covering the tracks at the present time." I presume you mean that representatives of the applicants in F. D. No. 19538, et al. will attend the meeting since Nickel Plate does not recognize that such applicants have authority to serve "the facilities at Lake Calumet Harbor", the Commission having specifically found that no authority was granted to the applicants to operate over the tracks owned by and located within the Port District.

In view of the posture of this proceeding, I respectfully decline your invitation since I do not feel it would be proper to attend and since the meeting would not serve any useful purpose in connection with the pending proceedings. As you know, Nickel Plate has filed a petition for reconsideration, reargument, and stay, and we are awaiting the reply of the applicants which I now understand will not be filed until after said meeting. I am sending copies of this letter to counsel for the applicants hereby calling their attention to the fact that any evidence which they might expect to offer in this proceeding concerning the meeting, or the lease, or as to revised lease terms, would be irrelevant because there is no application here for approval of the lease.

Two additional comments should be made to your letter. First, it is noted that you admit, as I have long contended, that there is no lease of Port District tracks by the applicants. Second, your letter refers to a "directive" by the Commission to amend the lease. Aside from the question of the propriety of the Commission's action since there [fol. 2959] is no application for approval of the lease, the amendment to the lease is a "condition" with such legal incidents as would flow therefrom.

As in the case of your letter, copies of this are being sent to the Interstate Commerce Commission and the Chicago Regional Port District, as well as to Mr. Dwinell and to counsel representing the applicants.

Very truly yours,

/s/ THOMAS O. BROKER
Thomas O. Broker,
Assistant General Counsel

cc: Mr. Harold D. McCoy
Secretary
Interstate Commerce Commission

Washington 25, D.C.
Chicago Regional Port District
360 North Michigan Avenue
Chicago 1, Illinois

Mr. Bruce Dwinell
Vice President
Chicago, Rock Island & Pacific Railroad Company
La Salle Street Station
Chicago 5, Illinois

Counsel for applicants

[fol. 3009]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Ill.

Finance Docket No. 19448

MICHIGAN CENTRAL RAILROAD COMPANY et al., Construction, etc.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY et al., Trackage Rights.

ORDER DENYING PETITIONS FOR RECONSIDERATION—
March 22, 1960

Upon consideration of (1) the record in the above-entitled proceedings; (2) the petition of the Chicago, Rock Island and Pacific Railroad Company, filed on November 12, 1959, and the petition of The New York, Chicago and St. Louis Railroad Company, filed on November 13, 1959, for reconsideration of the report, certificate, and order of this Commission, dated October 5, 1959, and for reargument; (3) the replies to said petitions filed by the interveners in support

of the applications and by the applicants, on December 30, and December 31, 1959, respectively; and

It appearing, That, as pointed out by one of the petitioners, the report of the Commission inadvertently stated that the Chicago, Rock Island and Pacific Railroad Company claimed that the minimum loss of revenue to it upon the approval of the above-described applications would be $345,964 instead of stating that said railroad company would be susceptible to a loss of that amount in the event of the approval of the application, and that said report should be modified to that extent; and

It further appearing, That the material matters set forth in the petitions have been considered by the Commission and discussed in its report, that the decision is based on [fol. 3010] adequate findings supported by the record, that except as to the above-mentioned correction which does not warrant alteration of the decision, there has been presented no error of fact or law with respect to the matters complained of by the petitioners, and that no showing has been made warranting reargument of the matter of reconsideration of said decision:

It is ordered, That said report of October 5, 1959, be, and it is hereby, modified as hereinabove indicated, and that said petitions for reconsideration and reargument be, and they are hereby, denied.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 3011]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of the Application of THE BELT RAILWAY COMPANY OF CHICAGO for Authority to Operate over Certain Lines of Railroad and Railroad Tracks in Cook County, Illinois.

APPLICATION AND SUPPLEMENT TO EARLIER APPLICATION OF THE BELT RAILWAY COMPANY—April 4, 1960

By application filed herein on April 25, 1957, applicant The Belt Railway Company of Chicago applied for authority under Section 5(2) of the Interstate Commerce Act to acquire trackage rights over lines of railroad in the Chicago area permitting it to operate to a point on the railroad tracks of the Chicago Regional Port District on the west side of Lake Calumet Harbor near 130th Street in the City of Chicago.

The purpose of the application, as shown on Pages 12 and elsewhere therein, was to provide the means whereby The Belt Railway Company of Chicago, a terminal switching carrier, serving many railroads and shippers, would have access to the Port area of the Chicago Regional Port District, at Calumet Harbor, which is being developed as a complete port for the handling of interstate and foreign commerce. However, at the hearing, and on subsequent briefs, the intervenors in opposition have made objection [fol. 3012] stating that the application as filed by applicant herein was not sufficiently broad to permit the Commission to authorize applicant to operate over tracks owned by the Port District to serve the industries and elevators located on the property of the Regional Port District.

In the report and order of the Commission herein of October 5, 1959, the Commission pointed out that Nickel Plate had stated "the applicants have failed to file ap-

propriate application for authority, so that even if the pending application should be approved, * * * , applicants would still not be authorized to operate within the Port District." The report of the Commission goes on to say: "We are of the opinion that the Nickel Plate's contention in this regard is meritorious, and nothing herein is to be construed as authority to applicants to operate over tracks owned by and located within, the Port District."

The purpose of this application and supplement to application is to make applicant's application herein clear that applicant is also seeking authority to operate over the existing tracks of the Port District, approximately 10.6 miles in length to the extent necessary for applicant to serve the elevators and industries located on such Port District tracks.

[fol. 3013] The application herein coupled with the statements and testimony at the hearing could have left no doubt in the minds of the intervenors in opposition, or of any other party to the proceeding, that one purpose of the proposed transaction was to obtain authorization so that applicant The Belt Railway Company of Chicago could serve the elevators and industries located on the Port District tracks by means of necessary trackage or operating rights. These were the only industries and tracks of any real importance that could have been served by applicant when using the trackage rights requested over Illinois Central, K. & E., and Pennsylvania. The location of the tracks in the Port District which would be used was shown at the hearing by testimony and through Exhibit H-28. Also the form of the lease under which applicant would use the tracks owned by the Port District was introduced at the hearing in 1957 as Exhibit H-64. In addition, since the Port District tracks were expected to be used by several railroads, as well as the Rock Island, which now uses those tracks without having applied for authority therefor, a memorandum of understanding was made as to the method to be followed in achieving efficient switching within the Port District, and was introduced at the hearing as Exhibit H-29.

Now in order to clarify and supplement the request in the application as filed herein; to conform with the case and proof therein as presented; and in accordance with re-
[fol. 3014] quirements of said report and order herein dated October 5, 1959, applicant hereby makes application and supplements its application herein by this document, and requests that the Commission grant all necessary authorization and approval for operation by The Belt Railway of Chicago, applicant herein, over all of the tracks now owned by the Chicago Regional Port District, such operation to be substantially on the basis set out in Lease Agreement, Exhibit H-64, and Exhibit H-29, as modified pursuant to said order, and attached hereto as Exhibit S-1, the final executed agreement to be filed with the Commission, when completed.

In the report and order herein, Page 47, it is stated that the situation prevailing on the property of the Port District would be the same as that which exists at Houston, Texas, in connection with the relationship between the Port Terminal Railroad Association and Harris County Houston Ship Channel Navigation District, as described in the cases therein cited. Applicant assumes from this reference that authority under Section 1(18) should be requested, in addition to the authority under Section 5(2) which has been requested. Accordingly, in addition to supplementing applicant's Section 5(2) application as herein provided, so as to request necessary trackage right au-
[fol. 3015] thority over the tracks owned by the Chicago Regional Port District applicant further requests authority under Section 1(18) of the Interstate Commerce Act for authority to operate over the tracks owned by the Chicago Regional Port District, in the area of Lake Calumet Harbor, to the extent necessary to serve the various elevators and other industries on the Port District property served by such tracks.

In accordance with the order of the Commission dated February 7, 1941, with respect to applications under Section 1(18), as amended, applicant respectfully shows:

(a) The exact corporate name of applicant is The Belt Railway Company of Chicago.

(b) Applicant is a common carrier by Railroad subject to the Interstate Commerce Act.

(c) Applicant was incorporated under the laws of the State of Illinois on November 22, 1882, and its charter extended for 50 years from the original expiration date of April 14, 1932.

(d) Applicant proposes to operate the railroad tracks of the Chicago Regional Port District, located as shown on Exhibit H-28 herein, all as shown at the hearing in this proceeding.

(e) All of the railroad facilities to be used by applicant are located in Cook County, Illinois.

[fol. 3016] (f) The route and termini of the lines it is proposed to operate are all in the City of Chicago, Illinois, and are shown on Exhibit H-28, which is hereby incorporated herein by reference.

(g) The total number of miles of track of the Chicago Regional Port District proposed to be operated, all of which is in the nature of yard and switching tracks, is approximately 10.6 miles.

(h) The reasons why the present or future public convenience and necessity will require the proposed operation have been shown during the hearing in this proceeding. The needs of the shippers to and from the Chicago Regional Port District, and of the shippers located at the Port District, require additional rail service from applicant, in order to realize the potential development of the port area, and in order to provide transportation service and facilities as needed by such shippers.

(i) Since no construction or application or acquisition is involved, no need for financing the construction is required. Payment for use of the facilities by ap-

plicant would be pursuant to lease agreement, sub-
[fol. 3017] stantially in the form of Exhibit H-64 presented at the hearing herein, modified as required by the Commission's October 5, 1959 order, and pursuant to negotiations between the parties and the Port District; which revised lease agreement is attached hereto as Exhibit S-1.

(j) Resolutions of the directors of applicant, adopted June 12, 1956, and March 9, 1960, authorized the filing of this application and supplemental application, in order to provide the basis for action by the Commission authorizing all necessary trackage and operating rights in order to serve the elevators and industries located on the tracks of the Chicago Regional Port District.

(k) Correspondence with regard to this application should be directed to Mr. Franklin C. Gagen, General Counsel of The Belt Railway Company of Chicago, Dearborn Station, Chicago, Illinois, and R. T. Cubbage, 547 West Jackson Boulevard, Chicago, Illinois.

(l) A map was presented as Exhibit H-28, showing the lines which applicant seeks authority to operate over, owned by Chicago Regional Port District, in addition to the lines which applicant has been authorized to operate over pursuant to the report and order herein dated October 5, 1959.

[fol. 3018] Wherefore, applicant prays (1) that the application and proceeding herein be supplemented to the extent hereinabove set out; and (2) that the Commission enter a further or modified order herein granting all necessary authorization and approval, and certificate of public convenience and necessity, so that applicant may operate over the existing tracks owned by the Chicago Regional Port District at Lake Calumet Harbor, to the extent necessary to serve the elevators, docks, industries and other shippers located on such tracks.

Further, in view of the fact that full notice of this proceeding was given by other joint applicants seeking authority under Section 1(18), in advance of the hearing, and all of the information which would ordinarily be involved in a Return to Questionnaire was included in documents filed by other joint applicants or has been fully developed at the two weeks of hearing herein, applicant hereby respectfully requests the Commission to waive in this case any further publication or Return to Questionnaire. The facts and merits of this entire proposal, including the operation by applicant to serve industries located on the Port District property, have been fully presented to and considered by the Commission after full notice, so that no public interest or other purpose would here be served by these usual requirements.

[fol. 3019] The purpose of this document is to make clear that the authorization requested in the Belt's applications is for authority to serve the elevators, docks, industries and other shippers on the Port District property, in conformity with the proof of the need for such service as shown by the evidence in this proceeding, and applicant respectfully requests a further or modified order herein so as to permit such service, which has been contemplated at all times during these proceedings.

Respectfully submitted,

The Belt Railway Company of Chicago, By L. A. Evans, President.

(Corporate Seal)

Attest:

J. R. Ekholm, Secretary.

Counsel:

Franklin C. Gagen, R. H. Bierma, William J. O'Brien, Jr., R. T. Cubbage, Eugene S. Davis, John B. Goodrich, Floyd J. Stuppi, Frank F. Vesper.

[fol. 3020] *Duly sworn to by L. A. Evans, jurat omitted in printing.*

[fol. 3022]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Ill.

SUPPLEMENT TO APPLICATION OF CENTRAL, PENNSYLVANIA AND SOUTH SHORE—April 4, 1960

By application filed with the Commission October 20, 1956, applicants sought authority under sections 1(18) and 5(2) of the Interstate Commerce Act "to extend their operations to serve the Lake Calumet Harbor District near Chicago, in Cook County, Illinois." This extension of operations would be "conducted over certain existing tracks and certain tracks that must be constructed."

It was intended by this language to include the tracks of the Chicago Regional Port District over which applicants must operate in order "to serve present and future industries, elevators, warehouses, docks, and piers in the Calumet Harbor Port area near Chicago in Cook County, Illinois." *

Because certain interveners sought to cast some doubt on the scope of the application, applicants add this supple- [fol. 3023] ment to their application in Finance Docket No. 19538 so as to specifically request authority under sections 1(18) and 5(2) of the Act to extend their lines by the operation of a line of railroad approximately 10.6 miles in length, presently owned by and located on the property of the Chicago Regional Port District at Lake Calumet Harbor in Cook County, Illinois.

The Commission's order of February 7, 1941, as amended, provides that carriers filing applications under section

* Answer of applicants to Question No. 5 in the Return to Questionnaire.

1(18) of the Act authorizing the construction, extension, acquisition, or operation of lines of railroad shall also file a return to the questionnaire set forth in the said order. The information called for by the questionnaire has already been set forth above and in the application and return to questionnaire in Finance Docket No. 19538.

Payment for use of the facilities by applicant would be pursuant to lease agreement, substantially in the form of Exhibit H-64 presented at the hearing herein, modified as required by the Commission's October 5, 1959 order, and pursuant to negotiations between the parties and the Port District; which revised lease agreement is attached hereto as Exhibit S-1.

Wherefore applicants pray that your Commission enter a further or modified order granting all necessary authorization and approval, and certificate of public convenience [fol. 3024] and necessity, in order to permit applicants to operate over the tracks owned by the Chicago Regional Port District at Lake Calumet Harbor, to the extent necessary to serve the elevators, industries, docks, and other shippers located on such tracks.

Respectfully submitted,

Illinois Central Railroad Company,
By .....

The Pennsylvania Railroad Company,
By .....

Chicago South Shore and South Bend Railroad,
By .....

Illinois Central Railroad Company, Joseph H. Wright, William J. O'Brien, Jr., 135 East Eleventh Place, Chicago 5, Illinois.

The Pennsylvania Railroad Company, Robert H. Bierma, 652 Union Station, Chicago 6, Illinois; Windsor F. Cousins, 1740 Suburban Station Bldg., Philadelphia 4, Pennsylvania.

Chicago South Shore and South Bend Railroad, John C. Lawyer, Edmund A. Schroer, 5305 Hohman Avenue, Hammond, Indiana.

Chicago, Illinois
April 4, 1960

[fol. 3025] *Duly sworn to by Wayne A. Johnston, Henry W. Large and D. E. Ferner, jurats omitted in printing.*

[fol. 3028]

EXHIBIT S-1 TO SUPPLEMENT TO APPLICATION

4-1-60

LEASE AGREEMENT

A lease agreement made this day of , 19 , by and between CHICAGO REGIONAL PORT DISTRICT, organized under the laws of the State of Illinois, hereinafter called "Lessor," and the following parties, hereinafter referred to collectively as "Lessees":

> The Belt Railway Company of Chicago, Chicago South Shore and South Bend Railroad, Illinois Central Railroad Company, The Pennsylvania Railroad Company, The New York Central Railroad Company, and Indiana Harbor Belt Railroad Company.

WITNESSETH:

WHEREAS, Lessor owns land and railroad tracks and appurtenances surrounding Calumet Lake in the City of Chicago, Illinois;

WHEREAS, Lessor desires to develop Calumet Lake as a principal Great Lakes port serving the metropolitan area of Chicago, Illinois, and the nation, and will require the railroad services of Lessees to aid said port development;

WHEREAS, Lessor is willing to lease such of its property and railroad facilities located thereon as may be neces-

sary for the furnishing of railroad service; and Lessees are willing to lease such property and furnish the necessary railroad service:

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE ONE

COVENANTS OF LESSOR

SECTION 1. Lessor agrees to lease to Lessees such land and railroad facilities presently owned by Lessor in the vicinity of Calumet Lake, in the City of Chicago, Illinois, and generally north of East 130th Street and east of Doty Avenue, hereinafter called "Property," more particularly described on attached Exhibit "A".

[fol. 3029] SECTION 2. Lessor agrees to provide and lease to Lessees such tracks and facilities as may be acquired by Lessor, including but not limited to tracks and facilities located on property covered by leases or contracts with the Pullman Railroad Company and The Philadelphia, Baltimore and Washington Railroad Company referred to in Section 3 of this Article and such additional land and additional railroad facilities as may be required in the future for proper development of the Calumet Lake district.

SECTION 3. Lessor may permit any other person, company, corporation or association to construct, lease or operate railroad facilities on its property for the purpose of serving the Lake Calumet District for railroad purposes when such construction, leasing or operation is approved by the Interstate Commerce Commission provided that in such event the Lessor shall reduce the amount to be paid by the Lessees for rental, maintenance and other charges hereunder to reflect the joint use of any or all of the facilities leased hereunder by any additional railroad.

SECTION 4. Lessor agrees to provide such additional land and to construct such additional tracks and facilities as

may be requested by a majority of the Lessees and add the cost of same to the valuation base on which Lessees pay rental under this agreement. In the event any part of the Property shall in the judgment of a majority of the Lessees, not be required for railroad service, it shall be retired and the value thereof shall be deducted from the valuation base on which Lessees pay rental under this agreement. The term Property shall reflect the changes provided for herein.

[fol. 3030] ARTICLE TWO

COVENANTS OF LESSEES

SECTION 1. Lessees agree to lease from Lessors the Property.

SECTION 2. Lessees agree, at their sole cost and expense, to maintain said Property and to furnish railroad service adequate to meet reasonable and practical requirements of industries, tenants of Lessor.

SECTION 3. Lessees agree to operate said Property as a joint facility. All tenants of Lessor having railroad industrial tracks will be shown in the directory of industries in the Chicago Switching District tariffs as being served by each of the Lessees. Such track will be served for account of such Lessees at tariff rates comparable with like rates charged by each of the Lessees at other industries served by it within the Chicago Switching District.

SECTION 4. Lessees agree to permit other railroads having physical connections with the Property to become parties to this agreement upon receipt of written application from such other railroads, provided such applicant railroads agree to be bound by the terms of this agreement in the same manner as though they had been original parties to such agreement.

SECTION 5. The Lessees agree to be jointly and severally obligated to Lessor under this agreement. Should any one

or more of the Lessees fail to meet its or their obligations hereunder, such defaulting party or parties shall forfeit all rights hereunder and the remaining parties shall be bound by the terms hereof. Such defaulting party or parties shall also forfeit any right to future participation in the use of said Property and may only be readmitted by unanimous agreement of all remaining parties to this agreement.

[fol. 3031] SECTION 6. Lessees agree, upon termination of this Lease as herein provided, to return all leased property to Lessor in relatively the same condition as when acquired by Lessees, normal wear and tear excepted.

ARTICLE THREE

MUTUAL COVENANTS OF LESSOR AND LESSEES

SECTION 1. Parties hereto agree that the valuation of the Property, as shown on inventory attached hereto and made a part hereof identified as Exhibit "D", as of the date of this agreement shall be ($) and that such valuation shall be currently changed to reflect additions or retirements when made in accordance with Section 4 of Article One.

SECTION 2. Lessor agrees to lease said leased Property to Lessees for an annual rental based on five per cent (5%) of current valuation as provided in Article Three, Section 1 above. Lessees agree to pay to Lessor said rental in equal monthly payments in advance upon the first business day of each month upon receipt of bill from Lessor, provided, however, that the total rental payable in any calendar year shall not exceed an amount equivalent to $2.00 per revenue car or locomotive handled to or from the Property during such calendar year.

SECTION 3. Lessor shall pay for, assume and be liable for all taxes, if any, levied or assessed against the Property.

SECTION 4. Lessor shall have the right to construct, maintain, renew, use and remove grade crossings for vehicular traffic over and across said Property at sole cost and expense of Lessor. The location and number of such grade crossings shall be determined by mutual agreement of the parties hereto. Lessees shall construct such grade crossings as may be required over roadways presently constructed across the said Property, and Lessees shall have the right to use such crossings. Cost of initial construction, maintenance, renewal or removal shall be solely borne by [fol. 3032] Lessees. Lessees shall be held harmless by Lessor for loss or damage to property and injury or death of persons using said grade crossing unless attributable to the sole fault or negligence of Lessees. Any crossing protection required at such grade crossings shall be the sole obligation of the party desiring such protection.

SECTION 5. Parties hereto agree that all liability for injury to or death of persons and loss and damage to property arising as a result of the sole fault or negligence of Lessees shall be solely borne by Lessees.

Liability arising from sole fault or negligence of Lessor, its agents or employees shall be solely borne by Lessor.

Except as otherwise provided in this agreement, liability arising from joint fault or negligence of the Lessor and Lessees shall be borne equally by Lessor and Lessees.

SECTION 6. Lessees shall have the right to sub-lease or assign the leased property but shall continue to be liable to Lessor under this Lease.

SECTION 7. This lease shall be in effect and binding upon the parties hereto, their successors or assigns when operation is commenced and remain in effect for a period of twenty (20) years thereafter, with the option in Lessees, or such of them desiring to renew, for renewal for four (4) additional terms of twenty (20) years each on the same terms and conditions. In the event of any such renewal, Lessees, or such of them desiring to renew, shall notify Lessor in writing one year before the expiration of the initial term and thereafter one year before the expiration of any renewal.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement, in septuplicate, the day and year first above written.

[fol. 3033]

CHICAGO REGIONAL PORT DISTRICT

.....

President

Attest:

.....

Secretary

THE BELT RAILWAY COMPANY OF CHICAGO

.....

President

Attest:

.....

Secretary

CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD

.....

President

Attest:

.....

Secretary

ILLINOIS CENTRAL RAILROAD COMPANY

.....

President

Attest:

.....

Secretary

THE PENNSYLVANIA RAILROAD COMPANY

.....

Vice President and Regional Manager

Attest:

.....

Assistant Secretary

THE NEW YORK CENTRAL RAILROAD COMPANY

.....

Vice President

Attest:

.....

Secretary

INDIANA HARBOR BELT RAILROAD COMPANY

.....

Vice President

Attest:

.....

Secretary

[fol. 3035]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Dockets 19448 and 19921

In the Matter of the Applications of THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority to Operate Over Certain Lines of Railroad and Railroad Tracks in Cook County, Illinois.

SUPPLEMENTS TO EARLIER APPLICATIONS OF MICHIGAN, CENTRAL AND HARBOR—April 5, 1960

By applications filed herein on August 3, 1956 and September 9, 1957, respectively, applicants, The Michigan Central Railroad Company, The New York Central Railroad Company and Indiana Harbor Belt Railroad Company, applied for authority under Section 1 (18-22) and Section 5 (2) of the Interstate Commerce Act to extend their line of railroad, and also, to acquire trackage rights

over lines of railroad, in the Chicago area, thereby permitting applicants to operate in and on the railroad tracks of the Chicago Regional Port District, located at Lake Calumet Harbor, near 126th Street, all in the City of Chicago, County of Cook, State of Illinois.

The purpose of the applications, as shown therein, was to provide the applicants herein the means to serve the Port facilities, then under construction, and to be constructed, by the Chicago Regional Port District, so that The New York Central Railroad Company, a large eastern trunk line, and Indiana Harbor Belt Railroad Company, a line connecting with all the railroads in the Chicago area, could participate in the future development of the potential industrial districts, and specifically the Chicago Regional Port District, for the efficient handling of interstate, foreign and overseas commerce to and from the Lake Calumet Harbor of the Chicago Regional Port Authority. The subject matter of the applications herein, and the applica- [fol. 3036] tions by other carriers relating thereto, was explored at extensive hearings by this Commission and was completely discussed in the numerous briefs filed thereafter. During this period of time, exceeding several years, the intervenors in opposition to the applications have raised the objection that the applications as filed by the applicants herein were not sufficiently broad to permit this Commission to authorize applicants to operate over tracks owned, now or in the future, by the Port District, which operation will be necessary to serve the industries and elevators located at the property of the Chicago Regional Port District.

In the report and order of the Commission, dated October 5, 1959, this Commission observed that the authority granted to the applicants, in these proceedings, was not to be construed as to extend to the operation over tracks owned by and located within the Chicago Regional Port District.

The purpose of this supplement is to clarify the applications of the applicants herein and make it clear that

applicants are seeking authority to operate over the existing tracks of the Chicago Regional Port District, approximately 10.6 miles in length, so that applicants herein may serve the elevators and industries located and to be located on such port district tracks.

The applications herein with the statements and testimony at the hearings made it abundantly clear to the intervenors in opposition, and to all of the parties to the proceedings, that one purpose of the proposed transaction was to obtain authorization so that the applicants herein could serve the elevators and industries located at the Port District tracks.

These industries and tracks were the only facilities, of any significance, that could have been served by applicants herein when using the trackage rights requested or utilizing the tracks sought to be constructed. The location of the tracks in the port district which would be utilized by [fol. 3037] the applicants herein was identified at the hearing by testimony and through Exhibit H-28. Exhibit H-64, the proposed lease between the applicants and the Port District, was introduced at the hearing in 1957. The port district tracks, which are presently being used by the Rock Island, were the subject matter of a memorandum of understanding as to the method to be followed in achieving efficient switching within the port district, demonstrated by Exhibit H-29 at the hearing.

In order to clarify and supplement the request in the applications filed herein; to conform the case to the proof therein presented; and in accordance with requirements of the report of this Commission and order herein entered as of October 5, 1959, these applicants hereby supplement their applications herein by this document and request this Commission to grant all necessary authorization and approval for operation by The New York Central Railroad Company and Indiana Harbor Belt Railroad Company, applicants herein, over all of the tracks now owned by the Chicago Regional Port District, such operation to be substantially on the basis set out in lease agreement, Exhibit

H-64 and Exhibit H-29, all as modified, pursuant to said order, and attached hereto, as Exhibit S-1, the final executed agreement to be filed with the Commission, when completed.

In the report and order herein published, the situation on the Chicago Regional Port District property is compared with that existing at Houston, Texas in relation to the Port Terminal Railroad Association and Harris County Houston Ship Channel Navigation District. Therefore, these applicants having requested that authority in their applications herein submitted under Sections 1 (18) and 5 (2), in order to clarify the issues, supplement their applications so as to request the necessary trackage right authority, or authority to operate, over those tracks owned by the Chicago Regional Port District so that applicants herein may operate over the tracks owned by the Chicago [fol. 3038] Regional Port District to the extent necessary to serve the various elevators and other industries on the port district property served by such tracks.

In the application previously submitted by these applicants under the provisions of Section 1 (18), (a) the exact corporate names of the applicants are therein listed; (b) the applicants therein are railroads subject to the Interstate Commerce Act; (c) the corporate identity, citizenship and date of incorporation of the applicants are therein enumerated; (d) the purpose of the proposed operation of the applicants has been stated in its various applications and specifically demonstrated during the hearings conducted therein by testimony and exhibits; (e) the fact that all of the facilities involved are located within the County of Cook, State of Illinois, has been demonstrated; (f) the route, origin and termination of the lines proposed to be operated upon have been demonstrated to be located in the City of Chicago, County of Cook, State of Illinois, as shown on the various exhibits previously introduced herein; (g) the total number of miles of track of the Chicago Regional Port District proposed to be operated is approximately 10.6 miles; (h) the reasons concerning

the present or future public convenience and necessity have been enumerated by the applicants herein in their applications and substantiated by the testimony during the hearings in this proceeding, all showing the requirements for the proposed operation. The needs of the shippers to and from the Chicago Regional Port District, and of the shippers located on the port district, requiring additional rail service from the applicants in order to realize the development of the potentials of the Port area and in order to provide transportation service and facilities required by said shippers and the public have been demonstrated; (i) under the order herein entered no construction or financing for construction will be undertaken by these applicants and payment for any facilities involved would be pursuant to and substantially in the form of Exhibit H-64 [fol. 3039] previously presented herein as modified by the requirements of the Commission's order of October 5, 1959 and attached hereto as Exhibit S-1; (j) resolutions of the applicants adopted on July 17, 1956, June 5, 1957, June 19, 1957 and July 16, 1957, authorized the filing of the applications in finance dockets 19448 and 19921 and any further or supplemental applications required to permit the applicants to serve the industries located in the Chicago Regional Port District.

Correspondence with regard to this supplemental application should be directed to Mr. Marvin A. Jersild, General Attorney, Room 1236, LaSalle Street Station, Chicago 5, Illinois.

During the proceedings herein Exhibit H-28, a map showing the lines over which applicants seek authority to operate, and owned by the Chicago Regional Port District, was presented in evidence. In addition, the lines which applicants have been authorized to operate over pursuant to the order of this Commission, dated October 5, 1959, have been identified.

Wherefore, applicants pray that the applications and proceedings herein be supplemented to the extent herein-

above set out and that the Commission enter a further or modified order granting all necessary authorization and approval and a certificate of public convenience and necessity, in order to permit applicants to operate over the existing tracks owned by the Chicago Regional Port District at Lake Calumet Harbor, to the extent necessary to serve the elevators, industries and other shippers located on such tracks.

In view of the fact that full notice of these proceedings was given by the other applicants herein, in advance of the hearing, and specifically by the applicants herein, and all of the information required has been promulgated and published by the applicants herein their application previously submitted pursuant to Section 5 (2) and in the return to questionnaire previously submitted by the applicants herein, pursuant to their application filed under Section 1 (18), and further information was developed at [fol. 3040] the hearings herein conducted, applicants herein respectfully request the Commission to waive any further publication or promulgation. The determination of this entire proposal, including the operation by applicants to serve industries located at the Chicago Regional Port District property have been fully presented to and considered by this Commission and a decision therein has been reached on the merits. The purpose of this document is to make clear that the authorization requested in the various applications of The New York Central Railroad Company and Indiana Harbor Belt Railroad Company is for authority to serve the elevators and industries on the Port District property in conformance with the proof of the need for such services as shown by the evidence in this proceeding.

Respectfully submitted,

The Michigan Central Railroad Company, By Douglass Campbell, Vice President.

The New York Central Railroad Company, By Douglass Campbell, Vice President.

Indiana Harbor Belt Railroad Company, By Douglass Campbell, Vice President.

[fol. 3041] Marvin A. Jersild, Richard O. Olson, Martin J. Keating, Counsel, Suite 1236, LaSalle Street Station, Chicago 5, Illinois, WAbash 2-4200.

[fol. 3042] *Duly sworn to by Douglass Campbell, jurat omitted in printing.*

[fol. 3053]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

Finance Docket Nos. 19448 and 19921

In the Matter of the Applications of THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY and INDIANA HARBOR BELT RAILROAD COMPANY for Authority to Operate Over Certain Lines of Railroad and Railroad Tracks in Cook County, Illinois.

Finance Docket No. 19742

In the Matter of the Application of THE BELT RAILWAY COMPANY OF CHICAGO for Authority to Operate Over Certain Lines of Railroad and Railroad Tracks in Cook County, Illinois.

ANSWER AND PROTEST AND INTERVENING PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY—April 20, 1960

On April 6 and 7, 1960, applicants listed above, filed documents entitled "Supplement to Application," "Supplements to Earlier Applications," and "Application and Supplement to Earlier Application."

Depending upon a determination as to whether the documents filed on April 6 and 7 by the Pennsylvania Railroad Company, the Illinois Central Railroad Company, and the Chicago South Shore and South Bend Railroad Company entitled "Application and Supplement to Earlier Application," and by The Michigan Central Railroad Company, The New York Central Railroad Company and the Indiana Harbor Belt Railroad Company entitled "Supplements to Earlier Applications," and by The Belt Railway Company of Chicago entitled "Application and Supplement to Earlier [fol. 3054] Application" are (a) supplements or amendments to the applications named and numbered above, or (b) new applications, the Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company desire that this document be considered (a) an answer and protest against the relief sought for in said documents filed by said applicants, or (b) a petition for intervention and answer and protest against the relief sought for in said documents filed by said applicants.

I

If these documents be considered supplements or amendments, the position of Rock Island-Pullman is that the intervention of Rock Island-Pullman in the original applications should stand and their position, as stated in their petition for intervention in the original applications, should remain as the position of Rock Island-Pullman.

II

If these documents are to be considered as original applications, then Rock Island-Pullman ask leave of the Commission to intervene in the proceedings and sets forth:

Petitioner, Chicago, Rock Island and Pacific Railroad Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, is admitted to do business under the laws of the State of Illinois and is a common carrier by railroad engaged in the interstate transportation of freight and passengers in and through the State of Illinois and other states.

[fol. 3055] Petitioner, Pullman Railroad Company, is a railroad corporation organized and existing under and by virtue of the laws of the State of Illinois. All the capital stock of Pullman Railroad Company was acquired by Chicago, Rock Island and Pacific Railroad Company under authority granted by the Commission on November 17, 1949 in F.D. No. 16252, at which time the Commission also approved Rock Island's operation of the Pullman properties under lease, the term of which has been extended to 1965 by authority of the Commission granted on January 20, 1955.

The railroad properties of the Pullman, including operating rights, consist, among others, of a line of railroad extending from a connection with the line of the Rock Island at or near the intersection of 95th Street and Stony Island Avenue, Chicago, Illinois, to points on the shore of Lake Calumet, including the Chicago Regional Port District, a distance of between four and five miles, together with various yard, side, spur, and industrial tracks and their appurtenances. By virtue of the lease agreement, Rock Island's operation of the Pullman has integrated these properties and rights into Rock Island's system operations.

Rock Island-Pullman own and/or operate a line of railroad within the City of Chicago, State of Illinois, as well as within other states and are engaged in interstate transportation.

By their applications in this case the applicants seek to [fol. 3056] extend their line of railroad within the Chicago Regional Port District which is located exclusively upon the tracks of petitioners and served by them alone. The purpose of applicants is to divert to their lines traffic handled by petitioners.

Rock Island-Pullman oppose the applications on the grounds that they are adequately serving the Chicago Regional Port District; that they have expended large sums of money in the construction of facilities to serve it; that they propose to and are prepared to expend further sums of money to keep themselves in a position to serve said Chicago Regional Port District adequately; that they are entitled to retain the traffic of the Chicago Regional Port District; that there is no reason adequate in law for the extension of the line of railroad of the applicants into territory heretofore exclusively served by petitioners; that the expenditures of sums of money required to be spent by applicants for the construction of the proposed extension cannot be justified either in fact or in law; and that the extension of the line of railroad of applicants is not supported by public convenience or necessity.

III

The making of the prayer in the alternative in this document is based on the fact that the applicants have not made clear what kind of applications they are filing or what they, in fact, are.

The Illinois Central, Pennsylvania, and South Shore document is entitled "Supplement to Application" and states [fol. 3057] that under their applications of October 20, 1956, applicants sought authority under Sections 1(18) and 5(2) to extend their operations.

The original South Shore application was a 5(2) application, while the Pennsylvania and Illinois Central applications were in part 5(2) and in part 1(18) applications. That part of the Illinois Central application which was filed under the provisions of Section 1(18) called for construc-

tion of track ending at 130th Street and the balance of its application was for trackage rights to the Port.

The Belt document is entitled "Application and Supplement to Earlier Application" but in the document itself it requests authority under Section 1(18) to operate over the tracks owned by the Chicago Regional Port District. Its original application was a 5(2) application.

The Document filed by the Michigan Central, the New York Central, and the Indiana Harbor Belt Railroad Company is entitled "Supplements to Earlier Applications" but within the body of the document the applicants rely on the Return to Questionnaire filed by them in their 1(18) application, F.D. 19448, which was ordered dismissed by the Commission in its order of October 5, 1959.

All of these documents, however entitled, are, in fact, applications under Section 1(18) for extension of lines of railroad of the applicants. Section 5(2) is not applicable because the applicants are not by these documents requesting authority to operate over the lines of railroad of another carrier.

[fol. 3058]

IV

Without regard to the form of these documents, Rock Island-Pullman protests the granting of the certificates and orders prayed for on the grounds set forth above as grounds for intervention, and, in addition, specifically sets forth the following grounds of objection:

(a) The proposed lease, even as amended by the applicants, has merely been presented to the Port District. Its terms have not been agreed to.

(b) The valuation has not been agreed to. We have heretofore said that Section 4 of Article I cannot be agreed to as a matter of good business by the Port District.

(c) The lease calls for an interest rate of 5 percent per annum. In their reply to Rock Island-Pullman's peti-

tion for reconsideration the applicants stated (page 9) that the Port District is committed by statute to a rate of 6⅝ percent on all its property.

We alleged in a Motion to Strike that this statement as to the 6⅝ percent rate was untrue but the Commission refused to allow the Motion to be filed, stating that the Motion was, in fact, a reply to a reply. The applicants should have notified the Commission of their error but they did not do so. Thus, the records of the Commission show this statement as to the 6⅝ percent rate as standing unchallenged in the record and yet the applicants have filed a proposed lease calling for a 5 percent rate.

(d) In their reply to the Rock Island-Pullman Petition for Reconsideration, the applicants made the statement that "the estimate of 27,000 cars per year proved to be grossly understated." We filed a motion with the Commission asking that this statement be stricken because it was made outside of the record and not based on the facts, stating that the estimate of 27,000 cars had been grossly overstated. The Commission refused to allow the motion to be filed on the ground that our Motion to Strike was, in fact, a reply to a reply. The applicants should have ascertained the facts and then advised the Commission of their error, but they did not do so. The actual facts are that in 1958, only 18,604 cars were handled to and from the Port District, while in 1959, only 16,315 such cars were handled.

[fol. 3059]

(e) Experience of the Rock Island at the Port shows that the estimate of the President of the Chicago Belt that the costs at the Port would be $5.00 per car was grossly understated. The Rock Island is commencing a study which will take some little time to ascertain the actual cost per car for the year 1959, and possibly some months in 1960.

(f) No enlargement of the facilities of the Port District has occurred since May of 1957.

(g) The prayers of the documents filed by the applicants are really that the Commission should enter an order authorizing the operation described in the latest documents and approving the terms of the proposed lease as submitted but leaving to the applicants the right and power to negotiate with the Port District as to the actual terms and conditions of the lease and to agree upon the final terms and conditions, all without interference from the Commission. Under their prayers after the Commission approves the lease, the applicants could change the terms and would only be required to file a copy of the final document.

(h) While these documents are variously labeled, they are, in our opinion, in fact, applications requesting authority of the Commission which the Commission has found had not been previously requested.

(i) The new applications are, in fact, 1(18) applications but do not conform to the provisions of the rules and regulations of the Commission covering such applications. Answers to questionnaires and evidence introduced in support of other applications do not satisfy the requirements of the rules of the Commission.

(j) The facts as set forth in the original hearing are no longer applicable, the record having been made two and a half years ago, before the St. Lawrence Waterway was opened. Conditions have changed materially. Rock Island-Pullman will be prejudiced unless a hearing is held.

V

Regardless of the form of the latest documents, the Commission has no authority to enter any order without

[fol. 3060] requiring the preliminary steps to be taken by the applicants pursuant to the rules and regulations of the Commission and without a hearing, for the reasons set forth in Section IV above.

Wherefore, a hearing is respectfully prayed.

Respectfully submitted,

Bruce Dwinell, 1025 La Salle Street Station, Chicago 5, Illinois.

John Guandolo, 1120 Connecticut Avenue, N.W., Washington, D. C.

Joseph B. Fleming, John L. Bordes, Kirkland, Ellis, Hodson, Chaffetz & Masters, Prudential Plaza, Chicago, Illinois.

Certificate of Service (omitted in printing).

[fol. 3062]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19448

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Construction, etc.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Trackage Rights.

ANSWER AND PROTEST AND INTERVENING PETITION OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY—April 22, 1960

Comes now The New York, Chicago and St. Louis Railroad Company (Nickel Plate) and respectfully files this statement in opposition to the following documents filed by applicants in these proceedings:

"Supplement to Application"—Finance Docket 19538, received April 6, 1960

"Supplements to Earlier Applications"—Finance Dockets 19448 and 19921, received April 7, 1960

"Application and Supplement to Earlier Application"—Finance Docket 19742, received April 14, 1960

These documents are collectively called "the Supplements" herein and are answered collectively since the applicants stand or fall together in their joint plan to serve Lake Calumet.

I.

Nickel Plate has already been authorized to intervene in the original finance dockets in which the Supplements have been filed; if these Supplements are to be considered under those dockets, it does not appear to be necessary [fol. 3063] for Nickel Plate to file further petitions for leave to intervene. If, however, the Supplements institute new proceedings, it is respectfully requested that this document be considered as a petition for leave to intervene in each proceeding. In either event, this document is a protest against the relief, orders, and certificates sought in the Supplements.

II.

Nickel Plate has sought court review of the Commission's report, certificate, and orders in the original dockets. The Supplements do not change the basis or prayer for relief in said court proceedings. Nickel Plate's interest in the original applications and the Supplements arises from the fact that it is a consolidated corporation organized and existing under the laws of the states of New York, Pennsylvania, Ohio, Indiana and Illinois, is authorized to

do business in those states as well as Missouri, and is well able along with the Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company to furnish any and all railroad service required at Lake Calumet. There is no need for railroad service by the applicants or any of them at Lake Calumet.

III.

The Supplements seek a further or modified order granting all necessary authority and certificates to permit the applicants to acquire and operate tracks within the Chicago Regional Port District. The Supplements in Finance Dockets 19448, 19742 and 19921 also specifically request the Commission to waive further notice to the public and the filing of further information such as Returns to Questionnaire. Each of the supplements also contains an incomplete and unexecuted form of proposed lease agreement, marked Exhibit S-1, between the applicants and the Chicago Regional Port District.

[fol. 3064]

IV.

From the allegations and prayers for relief contained in the Supplements, said documents are evidently founded on the following propositions:

1. that they, at least along with the initial applications, returns to questionnaire, and testimony, sufficiently set forth the requests required for effectuation of a joint plan to serve Lake Calumet.

2. that the original applications may now be supplemented on a *nunc pro tunc* basis back to the date of original filing so that no additional notices or filings of information are required.

3. that there is no need for further or reopened hearing or for the introduction of further evidence on any aspect of the proposed operation to and within the Lake Calumet area.

4. that the Commission can now issue further orders or certificates authorizing the acquisition and operation of tracks within the Chicago Regional Port District, and upon such issuance the applicants can, in view of previous Commission orders and certificate, effectuate their entire plan to serve Lake Calumet.

On all counts the applicants are wrong. Their requests for authority are deficient; illustration: there is no showing that the applicants in Finance Dockets 19448, 19538, and 19921 have authority to file their supplements. The original applications may not be supplemented *nunc pro tunc* under due process requirements of the Constitution of the United States and under the Interstate Commerce Act, the Administrative Procedure Act, and the Commission's rules. The authority sought in either the original applications or the Supplements may not properly be granted without full prior compliance with all requirements of procedure and law which among other requirements would include simultaneous hearings on any and all aspects [fol. 3065] of the plan to reach and serve Lake Calumet.

Furthermore, evidence which was inadmissible at prior hearings, such as the joint operating arrangement and lease, cannot now be cured retroactively after two and a half years. Nor can evidence introduced by the applicants two and a half years ago as to alleged needs for additional railroad service within the Chicago Regional Port District support requests now made for authority to perform such service.

V.

Additionally in respect of the proposed form of lease between the applicants and the Chicago Regional Port District, Exhibit S-1 to the Supplements, such paper is incomplete on its face both as to the property covered thereby and as to the consideration to be paid by the Lessees. There is no evidence that said document is acceptable

to the Lessor or will ever be executed or will constitute a valid and binding lease if executed as presented. It is evident from the patent deficiencies of this exhibit that the approval sought by the applicants in their Supplements is for the advance right and power to agree with the Chicago Regional Port District on such variations of the provisions of Exhibit S-1 as is mutually agreeable to them. Nickel Plate objects to the receipt in evidence of this exhibit without full opportunity and right of cross-examination.

Wherefore, The New York, Chicago and St. Louis Railroad Company respectfully requests that (1) the further or modified orders and such other relief as is requested in the Supplements described above be denied, and (2) if said Supplements are considered to institute new proceedings that it be authorized to intervene and be treated [fol. 3066] as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Respectfully submitted,

Thomas O. Broker, Counsel For The New York, Chicago and St. Louis Railroad Company, P. O. Box 6119, Cleveland 1, Ohio.

Dated: April 22, 1960.

Certificate of Service (omitted in printing).

[fol. 3068]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538[1]

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

APPLICANTS' REPLY TO ANSWERS, PROTESTS, AND INTERVENING PETITIONS OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, AND PULLMAN RAILROAD COMPANY—Filed May 9, 1960

Come now applicants, Illinois Central Railroad Company, The Pennsylvania Railroad Company, Chicago South Shore and South Bend Railroad, The Belt Railway Company of Chicago, The Michigan Central Railroad Company, The New York Central Railroad Company, and Indiana [fol. 3069] Harbor Belt Railroad Company,[2] and respectfully file their reply to the answers, protests, and intervening petitions of The New York, Chicago and St. Louis Railroad Company, Chicago Rock Island and Pacific Railroad Company, and Pullman Railroad Company.[2]

On October 5, 1959, the Commission issued its report and order finding that the present and future public conven-

[1] This document also embraces Finance Docket No. 19448, *Michigan Central Railroad Company, et al., Construction, etc.;* Finance Docket No. 19742, *Belt Railway Company of Chicago Trackage Rights, etc.;* and Finance Docket No. 19921, *Michigan Central Railroad Company, et al., Trackage Rights.*

[2] Hereinafter referred to, respectively, as Illinois Central, Pennsylvania, South Shore, Belt, Michigan Central, New York Central, Indiana Harbor Belt, Nickel Plate, Rock Island, and Pullman.

ience and necessity require construction by the Illinois Central, Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company, and the Pennsylvania of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago, in Cook County, Illinois, and that acquisition of trackage rights by The Belt, Michigan Central, New York Central, and Indiana Harbor Belt over said lines of railroad leading to the Lake Calumet Harbor Port of Chicago owned, operated, or to be constructed by the Illinois Central, Kensington and Eastern Railroad Company, South Shore, and Pennsylvania, subject to certain terms and conditions, was approved and authorized.

In the report issued by the Commission, at pages 46 and 47, it was stated that interveners in opposition, Rock Island, Nickel Plate, and Pullman, contended that it was necessary for applicants to obtain authority under section 1(18) of the Act to operate over the tracks of the Port District within the Port area. It related that Rock Island at present operates over the Port District tracks "pursuant to the provisions of a contract executed with the port district." (Actually, the contract referred to does not involve the tracks under consideration but merely a lead track and a [fol. 3070] hold track. Thus the Rock Island operates over the Port District tracks through sufferance of the Port District and without compensation to the Port District.) The Rock Island did not obtain such authority under section 1(18) to operate over tracks of the Port District within the Port area. The report of the Commission also states that the Nickel Plate had emphatically stated it had no intention of filing a section 1(18) application to serve future facilities on the east side of Lake Calumet Harbor on the future tracks of the Chicago Regional Port District. Nevertheless, the Commission found, if the instant applications were approved, the situation prevailing on the property of the Port District would be the same as that which exists at Houston, Texas, in connection with the relationship be-

tween the Port Terminal Railroad Association and the Harris County Houston Ship Channel Navigation District. (See *Operation Over Tracks Of Houston P.T.R. Asso.*, 150 I.C.C. 402, *Texas & N. O. R. Co. Operation*, 175 I.C.C. 417, *Harris County Houston Ship Channel Nav. Dist. Operation*, 290 I.C.C. 83, and Finance Docket No. 19852, *Harris County Houston Ship Channel Navigation District et al., Acquisition, etc.*, 295 I.C.C. 830, decided November 15, 1957 (not printed in full).) The Commission thereafter expressed the opinion that the proposed operation by the applicants into the Port District would constitute an extension of a line of railroad requiring the Commission's prior approval and that it was not merely an industrial spur contemplated by the exemption contained in section 1(22) of the Act.

In the application and return to questionnaire of Illinois Central Railroad Company, et al., Finance Docket No. 19538, the desire and intention of applicants to serve the present and future industries, elevators, warehouses, docks, and piers in the Lake Calumet Harbor area near Chicago, [fol. 3071] in Cook County, Illinois, was stated and restated in answer to questions numbered 5, 8, 18, 21, and 36, leaving no doubt in the minds of the examiner or the members of the Commission as to the scope of the authority sought in the proceedings.

The applications under section 5(2) of the Interstate Commerce Act of the South Shore, Belt, Michigan Central, New York Central, and Indiana Harbor Belt plainly disclosed also that the purpose of petitioning trackage rights over the aforesaid line was to serve the present and future industries, elevators, warehouses, docks, and piers in the Lake Calumet Harbor area.

As stated in the supplement to the application, payment for use of the facilities by applicants would be pursuant to lease agreement, substantially in the form of Exhibit H-64 presented at the hearing herein, modified as required by the Commission's order of October 5, 1959,

and pursuant to negotiations between the parties and the Port District; which revised lease agreement was attached thereto as Exhibit S-1.

The hearing, which consumed two weeks, from September 30 to October 11, 1957, saw the presentation of testimony and exhibits having as their purpose proof that the present and future public convenience and necessity required the extension of applicants' line of railroad and operation into the Lake Calumet Harbor area over the tracks of the Chicago Regional Port District to serve the aforesaid facilities. Applicants, through witnesses as well as by statements of counsel, made clear that the only real purpose of the applications was to serve the industries, elevators, docks, piers, and other facilities at Lake Calumet Harbor by means of the tracks of the Port District. The witnesses for the Port District and tenants at the Port, [fol. 3072] interveners, left no doubt but that they expected and desired applicants to use such tracks. The examiner, in his proposed report, found that the evidence justified the grant of the necessary authority, and the full Commission agreed with the examiner's findings.

In compliance with the directive of the Commission, applicants timely filed supplements to their original applications as contemplated would be done from the Commission's report and order of October 5, 1959.

Interveners now question the right of the Commission to grant this authority without hearing although, if a hearing were called, it would necessitate the reintroduction into evidence of the same basic testimony and exhibits which were introduced at the original hearing. Certainly, it is not only within the Commission's power but in the public interest and, under the circumstances, entirely proper for the Commission now to declare the record complete without visiting upon all parties, including the many interveners in support, and their witnesses, as well as upon the Commission itself, the additional time and expense incident to a long and repetitious hearing. The Com-

mission found the additional service of applicants is needed at Lake Calumet Harbor for the long term as well as the immediate future.

Contrary to the allegation of the Nickel Plate and Rock Island, i.e.:—

> "The authority sought in either the original applications or the Supplements may not properly be granted without full prior compliance with all requirements of procedure and law which among other requirements would include simultaneous hearings on any and all aspects of the plan to reach and serve Lake Calumet."—

[fol. 3073] the protesting parties, the Nickel Plate and Rock Island, are not entitled to a hearing as a matter of right. Section 1, paragraph 19, of the Interstate Commerce Act provides as follows:

> "*Application for certificate of commission; notice and hearing.* The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the commission may from time to time prescribe, and the provisions of this chapter shall apply to all such proceedings. Upon receipt of any application for such certificate the commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates."

In *Woodruff* v. *United States,* 40 F. Supp. 949, the District Court in reviewing an appeal from a section 1(18) proceeding stated (at page 953):

> "Section 1, Par. 19, expressly confers on the I.C.C. power to prescribe 'rules and regulations as to hearings'. And section 20a(6) provides that the Commission 'may hold hearings, if it sees fit, to enable it to determine its decision.' The language quite clearly contemplates that the State authorities shall be consulted, but that hearings shall be had only if the Commission sees fit."

The answers, protests, and intervening petitions of Nickel Plate, Rock Island, and Pullman contain the same arguments that were set forth in their original briefs, except- [fol. 3074] tions to the examiner's proposed report, in their petitions for reconsideration, and in their oral arguments.

Wherefore, applicants respectfully ask that the Commission deny the request of Nickel Plate, Rock Island, and Pullman for another hearing, further briefs, and oral argument, and issue a supplement to its order of October 5, 1959, authorizing the applicants to operate over the tracks of the Chicago Regional Port District in order to serve the aforesaid facilities at Lake Calumet Harbor, in Cook County, Illinois.

Respectfully submitted,

Robert H. Bierma, Richard T. Cubbage, Franklin C. Gagen, Richard O. Olson, Edmund A. Schroer, Wm. J. O'Brien, Jr., Attorneys for Applicants.

135 East Eleventh Place, Chicago 5, Illinois.

Date Due: May 10, 1960.

Certificate of Service (omitted in printing).

[fol. 3080]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

Application of CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD for Authority to Operate a Certain Line of Railroad in Cook County, Illinois.

SECOND SUPPLEMENT TO APPLICATION OF SOUTH SHORE—Filed May 18, 1960

By this application under Section 1(18) of the Interstate Commerce Act and by the Application and Supplement to Application filed in Finance Docket No. 19538 under Section 5(2) of the Act, Chicago South Shore and South Bend Railroad seeks authority to operate a line of railroad, being approximately 10.6 miles of tracks, presently owned by and located on the property of the Chicago Regional Port District at Lake Calumet Harbor in Cook County, Illinois.

In support of this application, applicant sets forth the following information:

(a) The exact corporate name of applicant is Chicago South Shore and South Bend Railroad.

(b) Applicant is a common carrier by railroad subject to the Interstate Commerce Act.

[fol. 3081] (c) Applicant was incorporated under the laws of the State of Indiana on June 23, 1925 and is authorized to operate in the states of Indiana and Illinois, being a duly incorporated and existing corporation under the laws of the State of Indiana and being duly admitted as a foreign corporation to transact business in the State of Illinois.

(d) This application is for authority to operate an existing line of railroad, being tracks, owned by and located

on the property of the Chicago Regional Port District at Lake Calumet Harbor in Cook County, Illinois, as shown on the attached map marked Exhibit 1. Applicant will reach said line of railroad by (i) trackage rights over the existing tracks of the Kensington and Eastern Railroad Company as shown in green on the attached map marked Exhibit 2, (ii) trackage rights over tracks proposed to be constructed by Illinois Central as shown in red on the attached map marked Exhibit 2 and (iii) trackage rights over tracks to be constructed by Pennsylvania Railroad Company on behalf of the Philadelphia Baltimore and Washington Railroad Company as shown in yellow on the attached map marked Exhibit 2; all of said trackage rights having been authorized by the Commission in Finance Docket No. 19538.

[fol. 3082] (e) The line of railroad, being tracks of the Chicago Regional Port District at Lake Calumet Harbor in Chicago, Illinois, which is the subject hereof is wholly located in Cook County, Illinois.

(f) The route and termini of the line it is proposed to operate under the authority herein sought is shown on the attached map marked Exhibit 1.

(g) The total number of miles of track proposed to be operated is approximately 10.6 miles as shown on the attached map marked Exhibit 1.

(h) The proposed operation is required in order that applicant may serve present and future industries, elevators, warehouses, docks and piers in the Calumet Harbor Port area.

(i) The applicant will finance its proposed operation out of its current funds. Applicant owns the stock of two corporations, namely Indiana and Kensington Railroad Company, an Illinois corporation which is inactive, and Chicago South Shore and South Bend Railroad, a Michigan corporation which operates a motor coach between Michi-

gan City, Indiana and St. Joseph, Michigan. See Schedule 217 of the Annual Report to the Commission for 1959.

(j) The resolution authorizing the making and filing of [fol. 3083] this application on behalf of applicant was by its Board of Directors at a meeting in Chicago, Illinois, on the 27th day of August, 1956.

(k) Correspondence in regard to this application should be addressed to John C. Lawyer, Edmund A. Schroer, General Counsel, Chicago South Shore and South Bend Railroad, 5217 Hohman Avenue, Hammond, Indiana.

(l) A map showing the line of railroad, being approximately 10.6 miles of track, which applicant seeks authority to operate is attached and marked Exhibit 1. Three extra copies of the map are submitted with the original of this application.

Wherefore applicant prays that the Commission issue a certificate of public convenience and necessity authorizing the operation for which authority is herein sought.

Respectfully submitted,

Chicago South Shore and South Bend Railroad, By D. E. Ferner, Its Vice President and General Manager.

Chicago South Shore and South Bend Railroad, John C. Lawyer, Edmund A. Schroer, 5217 Hohman Avenue, Hammond, Indiana.

Hammond, Indiana, May 16, 1960.

[fol. 3084] *Duly sworn by D. E. Ferner, jurat omitted in printing.*

[fol. 3085] Certificate of Service (omitted in printing).

[fol. 3089]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19742

In the Matter of the Application of THE BELT RAILWAY COMPANY OF CHICAGO for Authority to Operate Over Certain Lines of Railroad and Railroad Tracks in Cook County, Illinois.

THE BELT RAILWAY COMPANY'S RETURN TO QUESTIONNAIRE—June 10, 1960

The Belt Railway Company of Chicago, having made application to the Interstate Commerce Commission under paragraph (18) of Section 1 of the Interstate Commerce Act for authority to operate over certain lines of railroad and railroad tracks in Cook County, Illinois, which application is filed in the office of the Commission in Finance Docket No. 19742 hereby affirms that notice of the application has been published in the form prescribed by the Commission, at least once during each of three consecutive weeks beginning May 6, 1960, in the Chicago Daily Tribune, a newspaper of general circulation in the County of Cook, State of Illinois, being the state and county in which the proposed extension of line would be located, and that Exhibit H hereto attached is a true copy of the notice published in said newspaper; and it is further affirmed that notice of the filing of the application was forwarded by first-class mail to the Governor of the State of Illinois and to the Secretary of the Illinois Commerce Commission in accordance with the rules of this Commission, and that certificates of service hereto attached and marked Exhibit I(1) and I(2) contain true copies of the notice as forwarded to the Governor of the State of Illinois and the

[fol. 3090] Secretary of the Illinois Commerce Commission.

The applicant also submits the following information required by the Commission:

1. The essential facts to show that the applicant is a carrier by railroad, engaged in the transportation of passengers or property, subject to the Interstate Commerce Act, or is a corporation organized to construct and operate a railroad.

The Belt Railway Company of Chicago was incorporated under the laws of the State of Illinois, on November 22, 1882; operates solely within that state, but is party to transportation moves in interstate commerce.

Two thousand four hundred (2400) shares of the capital stock of the Belt Company is held by each of the following, except the Chesapeake and Ohio Railway Company which owns four thousand eight hundred (4800) shares:

The Atchison, Topeka and Santa Fe Railway Company
Illinois Central Railroad Company
Chicago, Rock Island and Pacific Railroad Company
Chicago, Burlington & Quincy Railroad Company
The Pennsylvania Railroad Company
Wisconsin Central Railway Company
The Chesapeake and Ohio Railway Company
Chicago & Eastern Illinois Railroad Company
Monon Railroad
Erie Railroad Company
Grand Trunk Western Railroad Company
Wabash Railroad Company

each of which companies enjoys equal trackage rights over the line of the Belt Railway.

The Belt Company operates under a lease from Chicago [fol. 3091] and Western Indiana Railroad Company, dated November 1, 1912, that part of the Western Indiana Company called the "Belt Division." Reference to this lease

may be had in Finance Docket No. 7243, wherein it is filed as Exhibit "D". The Belt Division, which is shown in red line on the map is intersected by nineteen trunk line railroads entering the City of Chicago and eleven switching lines. The business of the Belt Company is to transfer freight cars, loaded and empty, between the various railroads entering Chicago and the several switching lines. In addition to this transfer and interchange traffic, the Belt Company serves many industries located adjacent to and connected with its main tracks, in the delivery to and receipt therefrom of cars, loaded and empty, at regular tariff rates.

2. Whether the proposed new line of railroad will be both constructed and operated by the Applicant.

It is not proposed to construct a new line of railroad, but the applicant merely is seeking authority by this application to operate over the existing and proposed tracks of the Port District, approximately 10.6 miles in length to the extent necessary for applicant to serve the elevators and industries located on such Port District tracks. These tracks are shown on map attached hereto as Exhibit C.

3. Whether or not any corporation, individual, or trustee, holds control over the applicant at the date of filing this return. If control is so held:

(a) The form of control, whether sole or joint, and whether in trust.

[fol. 3092] Each of the following named railroad companies owns twenty-four hundred (2400) shares of the capital stock of the Belt Company, except The Chesapeake and Ohio Railway Company which owns four thousand eight hundred shares (4800), said shares being of the par value of One Hundred Dollars ($100.00) each.

(b) The name and business address of the controlling corporation, individual, or trustee.

The Atchison, Topeka and Santa Fe Railway Company,
Railway Exchange Building, 80 East Jackson Boulevard,
Chicago 4, Illinois

Illinois Central Railroad Company,
135 East 11th Place, Chicago 5, Illinois

Chicago, Rock Island and Pacific Railroad Company,
LaSalle Street Station, Chicago 5, Illinois

Chicago, Burlington & Quincy Railroad Company,
547 West Jackson Boulevard, Chicago 6, Illinois

The Pennsylvania Railroad Company,
6 Penn Center Plaza, Philadelphia 4, Pennsylvania

The Chesapeake and Ohio Railway Company,
Terminal Tower, Cleveland 1, Ohio

Wisconsin Central Railway Company,
Soo Line Building, Minneapolis 2, Minnesota

Chicago & Eastern Illinois Railroad Company,
332 South Michigan Avenue, Chicago 4, Illinois

Monon Railroad,
608 South Dearborn Street, Chicago 5, Illinois

Erie Railroad Company,
Midland Building, Cleveland 15, Ohio

[fol. 3093] Grand Trunk Western Railroad Company,
131 West Lafayette Blvd., Detroit 26, Michigan

Wabash Railroad Company,
Railway Exchange Building, St. Louis 1, Missouri

(c) The manner in which control was established. Through stock purchase.

(d) The extent of control.

Each of the above named stockholder railroad companies owns a one-thirteenth interest in the Belt Company with the exception of the Chesapeake and Ohio Railway Company which owns a two-thirteenths interest in the Belt Company.

(e) Whether control is direct or indirect.

Control is direct. The management of the affairs of the Belt Company is vested in a Board of Directors consisting of thirteen members, said Board being composed of one nominee of each of the aforesaid stockholder railroad companies with the exception of The Chesapeake and Ohio Railway Company which has two nominees to said Board.

(f) The name and business address of the beneficiaries for whom the trust, if any, is maintained.

None

(g) The purposes of the trust.

None

4. Whether the applicant is connected by stock ownership, or otherwise, with any industry to be served by the line proposed to be constructed, acquired, or operated. If [fol. 3094] so, state the facts.

Applicant is not connected by stock ownership, or otherwise, with any industry to be served by the line proposed to be constructed, acquired, or operated.

5. The chief uses and purposes of the proposed line or operation.

The applicant by this application seeks authority to operate over the existing and proposed tracks of the Port District, approximately 10.6 miles in length to the extent necessary for applicant to serve the elevators, docks, piers, and industries located on such Port District tracks. The Chicago Regional Port District, Calumet Harbor, is being developed as a complete port for the handling of interstate and foreign commerce.

6. The classes of service to be performed, as passenger, freight, express and switching.

Freight and switching service will be provided over the lines involved.

7. The kind of motive power to be used. If electric power, state source and estimated cost.

Diesel power will be used over the lines involved.

8. Whether the line proposed to be constructed, acquired, or operated would receive material revenue from the territory traversed, or serve any material public convenience and necessity of the local territory.

The line proposed to be operated will receive material revenue from freight traffic to be handled to and from in- [fol. 3095] dustries, elevators, warehouses, docks and piers presently operating in the Calumet Harbor, Port of Chicago, in addition to those facilities to be constructed with the further development of the area.

Material public convenience and necessity will be served by the entry into the Calumet Harbor, Port of Chicago, of a terminal switching carrier through its connections with trunk line carriers affording that area direct rail links with points in the South, East and West.

9. The name, area, and population of each county in which the new line is to be constructed, or in which the line to be acquired or operated is located, and the name and population of each city, town and village at which a station would be or is established, together with its distance from a designated initial point, with the source of information as to population.

The proposed operation will be upon tracks wholly within the switching limits of the City of Chicago in Cook County, Illinois. Cook County has an area of 954 square miles and a population of 4,508,792, and the City of Chicago has a population of 3,620,962, based upon the 1950 Census as shown in The World Almanac, 1956.

10. The names and places mentioned in paragraph 9 that are now served by common carrier railroads (excluding street railways), and the name of each such carrier serving the several places.

The Lake Calumet Port District, which the proposed operation will serve is currently served by the Chicago, Rock Island and Pacific Railroad Company by virtue of its acquisition of the Pullman Railroad Company, through [fol. 3096] purchase of capital stock, and lease by the former

of the railroad property of the latter approved and authorized by the Commission in Finance Docket No. 16252, *Pullman Railroad Company Control,* decided November 17, 1949.

11. The names of the places mentioned in paragraph 9 that have no common carrier railroad service, the distance in miles of each such place from the nearest station on a common carrier railroad, the name of each such railroad and the character of the connecting highway.

No other places are mentioned in paragraph 9.

12. The name and population of each city, town, and village (together with state and county in which located), within the area to be served but not on proposed route.

Not applicable.

13. The approximate distance in miles by highway from the nearest station on the line to be constructed or acquired to each of the places mentioned in paragraph 12, and the names of all common carrier railroads that now serve each of the places.

Not applicable.

14. The names of common carrier railroads with which the line would connect, and the proposed points of track connection.

The railroad tracks over which the right to operate is sought now will connect with a line of railroad to be constructed by the Illinois Central Railroad Company, the Kensington & Eastern Railroad Company, the Philadelphia, [fol. 3097] Baltimore & Washington Railroad Company and The Pennsylvania Railroad Company leading out from the west bound main track of the Kensington & Eastern at a point a short distance from Doty Avenue, Chicago, Illinois, and extending thence east and north to a connection with tracks to be constructed on property owned by the Pennsylvania Railroad at 130th Street, Chicago, Illinois. These tracks in turn will connect with the tracks of the Port District for which authority to use is here sought by the applicant. By trackage rights heretofore acquired with

Interstate Commerce Commission approval, the applicant together with the Illinois Central, the Pennsylvania, Michigan Central, New York Central, Indiana Harbor and Chicago South Shore & South Bend will connect with the Port District tracks.

The Chicago, Rock Island and Pacific Railroad Company presently connects with the tracks of the Port District.

15. The number of common carier truck and bus lines operating in the area to be traversed by the line, and the character of service performed by each.

There are ninety-six (96) common carrier truck lines operating in the area to be traversed by the line. The type of service afforded varies.

16. The general character of the country which the line would serve. Indicate whether it is level, rolling, mountainous, cultivated, pasture, prairie, desert, rocky, or timbered, etc.

The general character of the country which the proposed new extension of line would serve is generally level and well suited for industrial development.

[fol. 3098] 17. The approximate area of the territory to be served by the line, an estimate of the population therein and the area (1) in timber, (2) in pasture, and (3) under cultivation.

Not applicable, as the area served by the proposed new extension is to be used for the development of an inland port facility and general industrial development.

18. The kinds of industry carried on in the area to be served, such, for example, as farming, dairying, grazing, coal mining, manufacturing, lumbering, etc., and the relative importance of each.

The Lake Calumet Harbor Terminals and the Chicago Regional Port District have at present docks, piers, elevators, and warehouses and are engaged in the warehousing and transfer of freight between ships, barges, motor trucks, and railroads in the Lake Calumet Harbor area. Additional elevators are under construction.

19. The main facts as to the age, growth, and extent of such industries, their probable future growth and permanence and the reasons therefor.

The industrial development of the Lake Calumet Harbor area, although of recent origin, has been extremely rapid, and it is estimated that, if the present pace continues, complete development, including the utilization of all available land, will occur within the next ten years. In that event, the area will have become one of the foremost industrial centers in the Middle West.

[fol. 3099] 20. What carriers now serve these industries, and to what extent?

The only carriers serving the industries at present are the aforementioned common carrier truck lines and the Chicago Rock Island and Pacific Railroad by virtue of its purchase of the Pullman Railroad Company.

21. Whether the chief support of the line to be constructed or acquired would come from the general community or from some particular industry or industries, located or to be located. In the latter case, give facts concerning such particular industry or industries and applicant's contractual or financial relation thereto.

The chief support of the line would be derived from export, import, and domestic freight, to be interchanged between railroads, ships, and barges in the Lake Calumet Harbor area, having origin or destination in territory served by applicant. Applicant has no contractual or financial relationship with any industry at present located, or to be located, on the site of the line.

22. Whether the proposed line of raliroad would be built, acquired, or operated primarily for a direct profit from railway operation, or for the advantage of any other industry or business. If for the latter, state what industry or business would be so benefited, what such advantages would be, and the applicant's contractual or financial relationship to said industry.

The proposed line of railroad will be operated primarily for the direct profit of applicant and others to whom similar rights of user are sought, from railway operation.

[fol. 3100] 23. If the line is to be or is an extension of an existing railroad, or a branch, connecting track, or cut-off, the extent to which it is expected to be directly profitable in itself, and the extent to which it is expected to be justified by its effect on the business of the existing line.

See answers to questions 29 and 30.

24. If the line is to be a connecting link between existing railroads, the kind and volume of traffic, expressed in tons or carloads, that probably would be interchanged, and the economies that would be effected by such interchange.

Not applicable.

25. Of the interchange traffic mentioned in answer to paragraph 24, what part, expressed in tons or carloads, cannot be hauled or moved by existing railroads or truck lines.

Not applicable.

26. The facts concerning any agreement, tentative or otherwise, with existing carriers, covering operation, interchange of traffic, division of rates, or trackage rights, in connection with the line.

Copy of the proposed lease between Applicant and Chicago Regional Port District for the use of the latter's tracks at the Calumet Harbor Port introduced at the consolidated hearing in Finance Dockets 19448, 19538, 19742 and 19921, and copies of the trackage agreements to which the Belt is a party mentioned in item 14 hereinabove and as modified in said consolidated hearing are included as Exhibits 7-A, 7-b, 7-c and 7-d in the Belt Company's Application in Finance Docket 19742, are all included herein by this reference thereto.

[fol. 3101] 27. Whether any aid, gift, grant of right of way, or other donation has been promised in connection with the proposed new line of raidroad; if so, state specif-

ically the nature, amount, and value of such promised donations.

No aid, gift, grant of right of way, or other donation has been promised in connection with the proposed lines.

28. The manner in which it is proposed to finance construction and equipment, or acquisition, the kind and amount of securities to be issued, and the approximate terms of their sale; to what extent funds for financing are now available, and which, if any, of such securities would be underwritten by industries to be served by the proposed line.

Not applicable.

29. An estimate, in detail, of the character and volume of traffic expected and the gross revenue to be derived therefrom covering each of the first five years of operation, together with an estimate of the annual gross revenues expected after the first five years. The detailed estimate required for the first five years should show the amount of each class of traffic, the mean length of haul, the rate per unit, and the revenue to be derived, also chief points or territories of origin and destination.

An estimate, in detail, of the character and volume of traffic expected and the gross revenue to be derived thereupon, covering each of the first five years of operation, together with an estimate of the annual gross revenues expected after the first five years, is as follows:

[fol. 3102]

	Grain Traffic		Traffic Other Than Grain	
	Cars	Revenue	Cars	Revenue
First Year	2936	$ 71,778.	1269	$53,365.
Fifth year	5285	$129,201.	2285	$96,057.

	Total Traffic and Revenue	
	Cars	Revenue
First year	4205	$125,143.
Fifth year	7569	$225,258.

Mean Length of Haul—12 to 14 miles
Chief Class of Traffic—Grain

Rate per Unit—Rate per unit is the switching allowance paid by the road haul carrier which is presently $11.40 per inbound car and $11.46 per outbound car absorbed out of the through rate by the inbound or outbound road haul line.

30. The estimated gross revenue, operating expenses, net revenue, and net railway operating income, corresponding with the estimates of traffic under paragraph 29. By "net railway operating income" is meant the excess of the credits over the debits to income, as reflected by the operating revenue, operating expense, railway tax accrual, uncollectible railway revenue, equipment rent, and joint facilities rent accounts.

The estimates of the gross revenue, operating expenses, net revenue and net railway operating income, corresponding with the estimates of traffic set forth in paragraph 29 above are as follows:

[fol. 3103]

	First Year	Fifth Year
Grain	$ 71,778.	$129,201.
All Other	53,365.	96,057.
Total railway operating revenues	$125,143.	$225,258.
Railway operating expenses	40,703,	73,266.
Net revenue from railway operation	84,440.	151,992.
Railway tax accruals	5,546.	9,983.
Railway operating income	78,894.	142,009.
Net rents (debit)	7,290.	13,122.
Trackage charges	28,383.	51,090.
Net railway operating income	43,221.	77,797.

31. The part of the estimated traffic which will constitute net additional business developed or created by the construction of the proposed new line of railroad, and the part that will be diverted from existing railroads.

Part of the estimated traffic set forth in answers to questions 29 and 30 is presently handled by applicant as an intermediate switching carrier between the Rock Island as originating or terminating and road haul connections of the applicant. When applicant serves the Calumet Harbor Port, it will be competitive with the Rock Island as a terminal switching carrier. Applicant, however, will not be competitive with the Rock Island as a road haul carrier.

* * * * * * * *

[fol. 3113]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538[1]

ILLINOIS CENTRAL RAILROAD COMPANY, et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Supplemental certificate issued authorizing operation under lease by the Illinois Central Railroad Company, the Pennsylvania Railroad Company, the Chicago, South Shore & South Bend Railroad Company, the Belt Railway Company of Chicago, the New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over the existing tracks of the Chicago Regional Port District at Lake Calumet Harbor in Cook County, Ill.

Additional appearances: Windsor F. Cousins and Marvin A. Jersild for applicants.

Joseph B. Fleming for railroad interveners in opposition.

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[1] This report also embraces Finance Docket No. 19742, Belt Railway Company of Chicago Trackage Rights, Etc.; and Finance Docket No. 19921, Michigan Central Railroad Company, Et Al., Trackage Rights.

SUPPLEMENTAL REPORT OF THE COMMISSION—

Decided September 19, 1960

By the Commission:

By report, corrected certificate and order, dated October 5, 1959, 307 I.C.C. 493, we authorized, among other things, (a) the construction by the Illinois Central Railroad Company,[2] the Kensington and Eastern Railroad Company, The Philadelphia, Baltimore and Washington Railroad Company and The Pennsylvania Railroad Company of a line of railroad extending from a point near Doty Avenue to the Lake Calumet Harbor Port of Chicago (harbor port) in Cook County, Ill., and (b) the acquisition of trackage rights by the Illinois Central, the Pennsylvania, and the [fol. 3114] Chicago, South Shore and South Bend Railroad (South Shore) over the line to be constructed and certain existing tracks, Finance Docket No. 19538; (c) the acquisition of trackage rights by The Belt Railway Company of Chicago (Belt Railway) over lines of railroad leading to the harbor port, owned, operated, or to be constructed by the Illinois Central, the Kensington & Eastern, the South Shore and the Pennsylvania, Finance Docket No. 19742; and, (d) the acquisition of trackage rights by The Michigan Central Railroad Company, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over lines of railroad leading to the harbor port, owned or operated by the Illinois Central, the Kensington & Eastern, the South Shore and the Pennsylvania, Finance Docket No. 19921.

These proceedings involve the efforts of 6 operating railroads,[3] subject to the provisions of Part I of the Inter-

[2] The individual railroads sometimes will be referred to by the distinctive names in each corporate title, or by the designation shown in parentheses.

[3] The Kensington & Eastern and the Philadelphia, Baltimore & Washington are nonoperating companies. The former is owned by the Illinois Central and the latter is leased by the Pennsylvania. The New York Central is lessee of Michigan Central.

state Commerce Act, to provide additional rail service to the harbor port and harbor port facilities, constructed or to be constructed, by the Chicago Regional Port District (Port District) which had been exclusively served by the Pullman Division of the Chicago, Rock Island & Pacific Railroad Company (Rock Island).

While the applicants desired and it was their intention to serve the present and future industries, elevators, warehouses, docks and piers in the harbor area, the original applications as filed were not sufficiently broad to permit authorization to operate over tracks owned by the Port District to serve such facilities on the Port District property.

[fol. 3115] Accordingly, in our report of October 5, 1959, *supra,* page 498, we sustained the contention of the New York, Chicago & St. Louis Railroad Company (Nickel Plate) that the applicants had failed to file appropriate applications for such authority. The authority, subsequently granted, was not to be construed:

> "• • • as authority to the applicants to operate over the tracks owned by, and located within, the Port District."

Continuing we said, pages 525-526:

> "*Additional authority required.*—Interveners in opposition contend that the applicants, in addition to the authority requested in the pending applications, must obtain authority from us under section 1(18) of the act to operate over the tracks of the Port District within the port area. At present, the Rock Island operates over those tracks pursuant to the provisions of a contract executed with the Port District. The contract does not confer exclusive rights in the Rock Island to serve the port, but reserves to the Port District the right to permit entrance on behalf of other railroads. Under the proposal herein, the applicants desire that they be accorded the same right from the

Port District to operate on Port District property as is now enjoyed by the Rock Island.

• • • • • • •

"We are of the opinion that operation by the applicants into the Port District, as proposed, constitutes an extension of a line of railroad requiring our prior approval, and is not merely an industrial spur contemplated by the exemption contained in section 1 (22) of the act."

Thereafter, on April 6 and 7, and May 18, 1960, the applicants, either jointly or severally, filed various documents as supplements to their original applications so as to request the necessary authority to operate over the existing tracks of the Port District, approximately 10.6 miles [fol. 3116] in length, to the extent necessary for the applicants to serve the industrial facilities located, or to be located, on such Port District owned property.

The Nickel Plate and the Rock Island, interveners in opposition in the original proceedings, have filed documents in answer, protest and as intervening petitions, in which they request that if the above-mentioned documents of the applicants institute new proceedings that they be permitted leave to intervene; in which they contend that regardless of the form of the applicants' latest documents we have no authority to enter any order without requiring the preliminary steps to be taken by the applicants pursuant to the rules and regulations of this Commission and without a hearing; and, in which they protest against the relief, orders and certificates sought in the so-called supplements. Reply to the Nickel Plate and the Rock Island has been made by the applicants.

All of the applicants' documents, however entitled, are in fact, and will be construed, as supplemental applications under section 1(18) of the act for extensions of their respective lines of railroad. Inasmuch as the applicants, in their original presentation intended that they be accorded the same rights to operate on Port District property as

is now enjoyed by the Rock Island, the supplemental applications will be considered in conjunction with the original applications, and we believe properly so. As the Rock Island and the Nickel Plate have heretofore been authorized to intervene in the original proceedings, in which the supplemental applications have been docketed, no further grant of permission to intervene is deemed necessary.

[fol. 3117] Not only have the applicants now filed proper supplemental applications for the authority sought under section 1(18) but they have either filed, or incorporated by reference, response to the so-called "return to questionnaire" required by our rules and regulations. They have further complied with the rules and regulations governing such applications in regard to service and the publishing of proper public notice. Such procedural steps, although subsequent to the interveners' protest, were made properly within the time prescribed.

The Nickel Plate and Rock Island further contend that the authority sought in either the original applications or the supplements may not properly be granted without full prior compliance with all requirements of procedure and law which among other requirements would include simultaneous hearings on any and all aspects of the plan to reach and serve Lake Calumet, and that they will be prejudiced unless hearing is held.

In *Woodruff* v. *United States,* 40 F. Supp. 949, the District Court in reviewing an appeal from a section 1(18) proceeding, considered the entitlement of a party to a formal hearing on a proposed abandonment as a matter of right, and stated:

> The shortest answer to this contention lies in the simple observation that the plaintiff had no right to a formal hearing in the premises. For Par. 19 of Sec. 1 of the Interstate Commerce Act, as amended, 49 U.S.C.A. sec. 1(19), as also 49 U.S.C.A. 20a(6) to which it contains a reference, make it plain that on a proposed abandonment of a railroad line in addition

to the railroad involved only the Governor of a State or other appropriate State authority is entitled to be heard as of right. Section 1, Par. 19, expressly confers on the I.C.C. power to prescribe "rules and regulations as to hearings". And section 20a(6) provides [fol. 3118] that the Commission "may hold hearings, if it sees fit, to enable it to determine its decision." The language quite clearly contemplates that the State authorities shall be consulted, but that hearings shall be had only if the Commission see fit. * * *

While the *Woodruff* case involved an abandonment proceeding, section 1(18) to which the ruling was directed concerns itself with the application for and issuance of any certificate of public convenience and necessity. The statute does not go to the length of entitling the protesting Rock Island and Nickel Plate to a hearing as a matter of right and it is our opinion that a hearing is not necessary to enable us to make determinations herein.

Further opposition to the granting of the authority sought is presented by the Rock Island on the grounds that they are adequately serving the Port District; that they have expended large sums of money in the construction of facilities to serve it; that they propose to and are prepared to expend further sums of money to keep themselves in a position to serve such Port District adequately; that they are entitled to retain the traffic of the Port District; that there is no reason adequate in law for the extension of the line of railroad of the applicants into territory heretofore exclusively served by protestants; that the expenditures of sums of money required to be spent by applicants for the construction of the proposed extention cannot be justified either in fact or in law; and that the extension of the line of railroad of applicants is not supported by public convenience and necessity.

The Nickel Plate's position is that it is well able along with the Rock Island to furnish any and all railroad service required at Lake Calumet.

[fol. 3119] Examination of the record discloses that these are the same arguments and contentions that were set forth in protestants' original briefs, exceptions to the examiner's proposed report, in their petitions for reconsideration, and in their oral arguments. We fully discussed and considered these contentions in our report of October 5, 1959, and again considered them in disposing of the protestants' petitions for reconsideration and reargument.

Although we found the original applications to be so limited that the authority required to perfect the single plan, i.e., whereby each of the applicants would be providing line-haul service directly into the port and additional service to the facilities now located or hereafter to be located at the harbor port, could not thereunder be authorized, orderly procedure dictated that evidence as to the entire plan be presented. To that end hearing was held to develop all the facts pertaining to the public need for additional rail service to and from the port.

The hearing, which consumed two weeks, saw the presentation of testimony and exhibits having as their purpose proof that the present and future public convenience and necessity required the extension of the applicants' lines of railroad and operation into the harbor port area over the tracks of the Port District to serve the facilities located or to be located thereon. Applicants, through witnesses as well as through counsel, made clear that the only real purpose of the applications was to serve the industries, elevators, docks, piers, and other facilities at the harbor port by means of the tracks of the Port District. The [fol. 3120] witnesses for the Port District and tenants at the port, interveners, left no doubt but that they expected and desired applicants to use such tracks. In addition, a proposed lease agreement between the Port District and the applicants, a joint facility agreement, and trackage rights agreement, all contemplating a coordinated and practical operation for the applicants into the port, contrary to protestants' contention of being inadmissible, were re-

ceived in evidence and considered by us in our original determination to accord the applicants the same right from the Port District to operate on Port District property as is now enjoyed by the Rock Island. That such complete authority could not immediately be granted under the applications as then filed, did not, in our opinion, restrict receipt of such evidentiary material as proof of "the many advantages and benefits of applicants' service for fruition of the plans envisioned and in the process of being executed, on schedule, by the Port District", and the impelling need for additional rail service at the port.

Such authority as has heretofore been granted we consider as the first step in the over-all plan to provide adequate rail service to the Lake Calumet Harbor area. That it was limited was due to technical deficiency which by proper application has now been cured. We see no need for further hearing or to require the reintroduction into evidence of the same basic testimony and exhibits which were introduced at the original hearing. Nor do we deem it proper to revisit upon the applicants and intervening parties the additional time and expense incident to a long and repetitious hearing.

[fol. 3121] The form of lease under which the applicants would use the tracks owned by the Port District was introduced as an exhibit at the hearing. In addition, since the Port District tracks were to be used by several railroads, as well as the Rock Island, a memorandum of understanding was made as to the method to be followed in achieving efficient switching within the port area. We fully discussed and considered such agreements in our report of October 5, 1959, and for that reason they will not be detailed herein.

We found objection to only one provision, that in the proposed lease, wherein the Port District would agree not to permit any other person, company, corporation, or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the harbor port

area, other than as presently covered by leases or contracts with the Rock Island and the Philadelphia, Baltimore & Washington, except upon written approval from the applicants as lessees. We were of the opinion that this provision between the Port District and the applicants was objectionable because it would tend to unduly restrain competition and for that reason issued our certificate and order of October 5, 1959, under the express condition that the proposed lease agreement be amended to provide that the Port District may permit any other person, company, corporation, or association to construct, lease, or operate railroad facilities on its property for the purpose of serving the Lake Calumet Harbor area, if such construction, lease, or operation is approved by us, and to eliminate any requirement for approval thereof by the other parties to the agreement.

[fol. 3122] The applicants have now submitted a revised lease agreement, modified as required by our order of October 5, 1959, to the receipt of which the protestants object on the grounds that the original joint operating agreement and lease (a) cannot now be cured retroactively after two and a half years; (b) is incomplete on its face both as to the property covered thereby and the consideration to be paid by lessees; (c) that there is no evidence that the revised lease is acceptable to the lessor or will ever be executed or will constitute a valid and binding lease if executed as presented; (d) that the approval sought is for the advance right and power to agree with the Port District on such variations of the provisions of the revised lease as is mutually agreeable to them; and, (e) they should have full opportunity and right of cross-examination.

With the exception of the revision ordered, the principal provisions of the lease are identical to the agreement originally considered by us. The condition imposed in our order was an express mandate to the parties to perfect the lease which has been done and now resubmitted to us

according to that mandate. The description of the property covered is identical to the description in the original document and is fully supported by accompanying exhibits. The consideration to be paid is as previously set forth, i.e., the property would be leased to the applicants for an annual rental based on 5 percent of an agreed valuation, provided that the total rental, payable in any calendar year, should not exceed an amount equivalent to $2 per car, loaded or empty, or locomotive handled to or from the property during such calendar year. The contract of [fol. 3123] lease would run for 20 years, with the option in the applicants for a renewal for 4 additional terms of 20 years each, on the same terms and conditions.

We find that the lease agreement, as amended, is reasonable and adequate to accomplish the purpose for which it is intended. Whether the lease will be finally executed by the parties is for their determination and there is no indication by the parties that such lease would not be executed. Any change in the terms or provisions of the lease subsequently made by the parties, or further modification, contrary to the contentions of the protestants, would require our prior approval and authorization.

The protestants contention that they should have full opportunity and right of cross-examination with respect to the revised lease is without substance. The record shows they have had unlimited opportunity to cross-examine with reference to the provisions of the lease and availed themselves of petition for reconsideration of our order of October 5, 1959, which directed the modification of the presented lease.

The industries and tracks in the Port District are the only facilities, of any significance, that can be served by the applicants herein when using the trackage rights or utilizing the tracks constructed pursuant to our prior authorization and approval. The needs of the shippers to and from the Port District, and of the shippers located in the harbor port area, requiring additional rail service

from the applicants in order to realize the developments of the potentials of the port area have been demonstrated. The reason upon which we base the present and future [fol. 3124] public convenience and necessity have been enumerated and detailed by the applicants, substantiated by testimony during the hearings in these proceedings, and all showing the requirements and necessity of the proposed operation culminated in the findings in our prior report. Those findings are adopted and affirmed herein.

Contentions of the parties as to either law or fact not specifically discussed herein have been given consideration and found without material significance or not justified.

In view of the foregoing we find that the present and future public convenience and necessity require operation under lease by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, the Chicago, South Shore and South Bend Railroad Company, The Belt Railway Company of Chicago, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over the existing tracks of the Chicago Regional Port District at Lake Calumet Harbor in Cook County, Ill., described herein.

An appropriate supplemental certificate will be issued.

Commissioner Freas dissenting:

Consistent with my separate expression in the prior report in these proceedings, 307 I.C.C. 493, 531, I would deny the supplemental applications involved herein.

Commissioners Walrath and Herring did not participate.

[fol. 3125]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Trackage Rights.

SUPPLEMENTAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY—September 19, 1960

Investigation of the matters and things involved in these proceedings having been made, and the Commission, on the date hereof, having made and filed a supplemental report containing its findings of fact and conclusions thereon, which supplemental report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require operation under lease by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, the Chicago, South Shore and South Bend Railroad Company, The Belt Railway Company of Chicago, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company over the existing tracks of the Chicago Regional Port District at

Lake Calumet Harbor in Cook County, Ill., described in the supplemental report aforesaid;

It is ordered, That the aforesaid common carriers by railroad, when filing schedules establishing rates and charges applicable to said lines of railroad, shall in such schedules refer to this certificate by date and docket numbers;

It is further ordered, That, if the authority granted in this certificate is not exercised within one year from its date, it shall be of no further force or effect.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 3163] [File endorsement omitted]

[fol. 3171]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538*

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY, INTERVENERS IN OPPOSITION, FOR RECONSIDERATION AND ARGUMENT OF THE ORDER OF SEPTEMBER 19, 1960—Filed November 3, 1960

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* This document also embraces Finance Docket No. 19448, *Michigan Central Railroad Company et al., Construction,* etc.; Finance Docket No. 19742, *Belt Railway Company of Chicago Trackage Rights,* etc. and Finance Docket No. 19921, *Michigan Central Railroad Company, et al., Trackage Rights.*

These petitioners respectfully petition the Commission for reconsideration of its decision of September 19, 1960 and for oral argument of the matter.

I.

The Commission erred in failing to accord petitioners a full and complete hearing.

Before reaching the other questions presented in the Petition for Reconsideration, the Commission should meet at the threshold the contention that we have not been accorded a full and complete hearing which is a prerequisite to the making of a valid order. We challenge the order as depriving us of property without due process of law in violation of the Fifth Amendment of the Constitution [fol. 3172] of the United States. In short, the Congressional intent underlying Section 1(18-22) demands a full and complete hearing, and the Commission's order is void if such a hearing is denied. The specific congressional purpose in enacting Section 1 (18-22) was expressed by Mr. Justice Brandeis in *Texas & Pacific Ry. Co.* v. *Gulf, Colorado & Santa Fe Ry. Co.*, 270 U. S. 266, 277 (1926):

> " • • • By that measure, Congress undertook to develop and maintain, for the people of the United States, an adequate railway system. It recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; and that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss. • • • "

This language represents recognition by the Supreme Court that the carrier in the field has certain property rights which Congress sought to protect in enacting Section 1(18-22). See also *Detroit & M. Ry. Co.* v. *Boyne City G. & A. R. Co.*, 286 F. 540 (E. D. Mich., 1923); *Texas & New Orleans R. R. Co.* v. *The North Side Belt Ry. Co.*, 276 U. S. 475, 479 (1928); *Union Pac. R. Co.* v. *Denver & Rio Grande West. R. Co.*, 198 F. 2d 854, 858 (10 Cir., 1952); *Missouri-Kansas-Texas R. Co.* v. *Northern Oklahoma Rys.*, 25 F. 2d 689, 691 (8 Cir., 1928), cert. denied 278 U. S. 610; *Ches. & Ohio Ry.* v. *United States*, 283 U. S. 35, 42 (1931).

Absent a full and complete hearing to the carriers in the field, property rights are taken without due process and public rights are affected adversely. Even though applicants may contend that the statute involved here [fol. 3173] does not in specific language require a hearing on the issues, the legislative intent in enacting the statute makes it plain that a hearing is required.* The importance of a hearing, where one is required either by specific statutory language or by Congressional intent, is best expressed in *Shields* v. *Utah-Idaho Cent. R. Co.*, 305 U. S. 177, 182 (1938), where the Court said:

> "In considering the effect of the Commission's determination, the fundamental question is the intent of Congress. The language of the provision points to definitive action. The Commission is to *'determine'*. The Commission must determine *'after hearing'*. The requirement of a 'hearing' has obvious reference 'to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts'. The 'hearing' is 'the hearing of evidence and arguments'. * * * And the manifest purpose in requiring a hearing is to comply with the requirement of

* Section 1(19) of the Act does provide that an application for the issuance of a certificate "shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe * * *."

due process upon which the parties affected by the determination of an administrative body are entitled to insist. * * * The Commission is not only authorized but 'directed' to give the hearing and make the determination when requested. We cannot think that a determination so prescribed and safeguarded was intended to have no legal effect. * * *."

In *Ohio Bell Telephone Co.* v. *Public Utilities Commission,* 301 U. S. 292 (1937), the Supreme Court called attention to the fact that the requirement of a full hearing is based on safeguards to the litigants. There it stated (pp. 304-5):

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached [fol. 3174] with due submission to constitutional restraints. * * * Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' * * * of a fair and open hearing be maintained in its integrity. * * * The right to such a hearing is one of 'the rudiments of fair play' * * * assured to every litigant by the Fourteenth Amendment as a minimal requirement. * * * There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

In its report, the Commission relies (Sheets 5-6) on *Woodruff* v. *United States,* 40 F. Supp. 949, to support its position that "The statute does not go to the length

of entitling the protesting Rock Island and Nickel Plate to a hearing as a matter of right and it is our opinion that a hearing is not necessary to enable us to make determinations herein."

This case simply is not pertinent since it involves an abandonment proceeding which, of course, did not affect the property rights of another railroad. It is significant that even in the *Woodruff* case, the Court recognized that those whose rights are customarily affected in abandonment proceedings are entitled to be heard as of right. That is to say, the railroad involved in the abandonment and the appropriate state authorities, who represent the public affected by an abandonment, are entitled to be heard. In the instant proceedings our rights as well as public rights are being affected and we are "entitled to be heard as of right."*

[fol. 3175] Assuming that the language of the *Woodruff* case is applicable, which we deny, it still would not be controlling under the procedural mechanism here involved. The Commission saw fit to grant us a hearing under the original applications which constituted a recognition on its part that a hearing was necessary. Having afforded us an opportunity of a hearing in the first place, the Commission cannot now restrict the hearing to the original applications and deny us a hearing on the new applications. We must be fully apprised of the evidence to support the applications and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can we maintain our rights to make a proper showing. A hearing implies both the privilege of introducing evidence and the duty of deciding a proceeding in accordance with the

* Further, Section 5(2)(b) of the Act is involved here as well as 1(18-22) and under 5(2)(b) "a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest." No determination has been made by the Commission initially "that a public hearing is not necessary in the public interest."

evidence. *Baltimore & O. R. Co., et al.* v. *United States, et al.*, 264 U. S. 258, 265 (1924). As the Supreme Court said in *Akron, C. & Y. Ry. Co.* v. *United States* (the New England Divisions Case), 261 U. S. 184, 200 (1923):

> "• • • Whether a hearing was full, must be determined by the character of the hearing, not by that of the order entered thereon. A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken."

The Commission did not recognize and observe the essentials of a full hearing set out by the Supreme Court in *Akron, C. & Y. Ry. Co.* v. *United States.*

It is significant that in the fields of communications and air transportation, a grant of operating authority requires a preliminary finding of public interest, convenience and necessity. In such cases, the courts have been quick [fol. 3176] to require hearings in order to determine whether the public will be adversely affected. See *Ashbacker Radio Co.* v. *Federal Communications Commission*, 326 U. S. 327, 333-334 (1945); *Carroll Broadcasting Co.* v. *Federal Communications Commission*, 258 F. 2d 440, 443 (D. C. Cir., 1958); *Delta Air Lines, Inc.* v. *C. A. B.*, 275 F. 2d 632, 637-638 (D. C. Cir., 1959), cert. denied 80 S. Ct. 953 and 954.

An examination of the cases in the fields of communications and air transportation show that the courts have held that no person is to have anything in the nature of a property right as a result of the granting of authority. In contrast to authority granted in the fields of communications and air transportation, we do have property rights. See *Chicago, R. I. & P. R. Co.* v. *Illinois Commerce Commission*, 111 N. E. 2d 136 (Ill. 1953). Thus we are entitled to a full and complete hearing for two reasons, that is, to protect valuable property rights and to demonstrate that

the public will be adversely affected by the grant of the applications.

That important property rights are involved here as distinguished from licenses in the communications field is demonstrated by the language of the Supreme Court in *Federal Communications Commission* v. *Sanders Bros. R. S.*, 309 U. S. 470 (1940), where the Court said (pp. 474-476):

" • • • Thus the Act recognizes that the field of broadcasting is one of free competition. *The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.*

An important element of public interest and conveni- [fol. 3177] ence affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts. That such ability may be assured the Act contemplates inquiry by the Commission, *inter alia*, into an applicant's financial qualifications to operate the proposed station.

But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel.

The policy of the Act is clear that no person is to have anything in the nature of a property right as a

result of the granting of a license. Licenses are limited to a maximum of three years' duration, may be revoked, and need not be renewed. Thus the channels presently occupied remain free for a new assignment to another licensee in the interest of the listening public.

Plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public. Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public.

This is not to say that the question of competition between a proposed station and one operating under an existing license is to be entirely disregarded by the Commission, and, indeed, the Commission's practice shows that it does not disregard that question. It may have a vital and important bearing upon the ability of the applicant adequately to serve his public; it may indicate that both stations,—the existing and the proposed—will go under, with the result that [fol. 3178] a portion of the listening public will be left without adequate service; it may indicate that, by a division of the field, both stations will be compelled to render inadequate service. These matters, however, are distinct from the consideration that, if a license be granted, competition between the licensee and any other existing station may cause economic loss to the latter. *If such economic loss were a valid reason for refusing a license this would mean that the Commission's function is to grant a monopoly in the field of broadcasting, a result which the Act itself expressly negatives, which Congress would not have contemplated without granting the Commission powers of control over the rates, programs, and other activities of the business of broadcasting.*

We conclude that economic injury to an existing station is not a separate and independent element to be taken into consideration by the Commission in determining whether it shall grant or withhold a license." (Emphasis supplied.)

We have always contended, and the Commission so noted (Sheet 5), that the authority sought in either the original applications or the present applications may not properly be granted without full prior compliance with all requirements of procedure and law which, among other requirements, would include hearings on any and all aspects of the plan to reach and serve Lake Calumet Port, and that we will be prejudiced unless a hearing is held. We repeat that the Commission had the obligation to grant us a full and complete hearing, and that it may not form a judgment without affording us such a hearing.

[fol. 3179] II.

The Commission erred in giving effect to the contents of the following statement:

"While the applicants desired and it was their intention to serve the present and future industries, elevators, warehouses, docks and piers in the harbor area, the original applications as filed were not sufficiently broad to permit authorization to operate over tracks owned by the Port District to serve such facilities on the Port District property." (Sheet 2.)

The intention of the applicants is to be determined by their applications. The Commission's finding as to the intention of the applicants as set forth in their applications was stated in its order of October 5, 1959. The Commission found that in their applications the applicants did not apply for authority to operate on tracks of the Port District and serve industries located thereon. (Sheet 8.)

If applicants did not apply for authority to operate within the Port under the original applications, then it

follows that new applications had to be filed for the additional authority. This was recognized by the Commission in its order of October 5, 1959. Since the new applications seek authority beyond that sought in the original appli-

filed and, without benefit of a hearing, granting the applications.

Here, the Commission has engaged in a little psychoanalysis and, upon the basis of a probing of the minds, has arrived at the conclusion that applicants really wanted to operate on tracks of the Port and serve industries located thereon, but never got around to saying so in their applications because of some mental block. This, the Commission seems to say, can be cured by having new applications filed and, without benefit of a hearing, grant the applications.

[fol. 3180] This new approach by the Commission comes as a surprise. Before the hearing commenced on the original applications, we pointed out that applicants, through formal pleadings opposing our intervention, stated that, "by and through their applications" they did not intend to handle domestic traffic but only export-import traffic. We said that by their opposition to our intervention, applicants declared their intention that their applications were limited to export-import traffic. The Commission disagreed with our contention saying, in effect, that it was bound by the applications as filed and not by declarations of intent in other pleadings.

In contradistinction to the Commission's solution of the domestic traffic versus export-import traffic problem, the Commission, in its order of September 19, 1960, has actually given effect to the declarations of intent of applicants by authorizing service within the Port without requiring proper applications or a hearing. The Commission has given effect to the declarations of intent even after refusing in its order of October 5, 1959, to enlarge the scope of the original applications by giving effect to the declarations of intent as to service. The Commission stated (Sheet 47):

"We are of the opinion that operation by the applicants into the Port District, as proposed, constitutes an extension of a line of railroad requiring our prior approval, and is not merely an industrial spur contemplated by the exemption contained in section 1(22) of the act."

[fol. 3181]

III.

The Commission erred in stating:

"Inasmuch as the applicants, in their original presentation intended that they be accorded the same rights to operate on Port District property as is now enjoyed by the Rock Island, the supplemental applications will be considered in conjunction with the original applications, and we believe properly so." (Sheet 4.)

The error committed by the Commission here is the same as that pointed out above.

IV.

The Commission erred in making the following statements:

"Not only have the applicants now filed proper supplemental applications for the authority sought under section 1(18) but they have either filed, or incorporated by reference, response to the so-called 'return to questionnaire' required by our rules and regulations." (Sheet 5.)

The new applications should have been 1(18) applications. They did not purport to be such. They purported merely to be supplements to the original applications.

As to the use of the Pennsylvania tracks connecting with Port District tracks, the Illinois Central application was a 5(2) application to operate over them. The South Shore, Belt, Indiana Harbor Belt and New York Central applica-

tions (except the original New York Central-Indiana Harbor Belt application which was ordered dismissed because no evidence was introduced to support it) were 5(2) applications.

Separate applications must be filed under 5(2) and 1(18), each meeting the separate requirements of the statutes [fol. 3182] and of the rules of the Commission. (This is true even though two applications may be included in one document.) Applications under 1(18) never were filed.

There was no attempt to comply with the rules governing 1(18) applications. Particularly, the Chicago Belt filed a "return to questionnaire" but served no copy on us. We had no knowledge of the filing until October 31, 1960, when we inquired. The Chicago Belt's new application was served on us. We were a party to the proceeding and we were entitled to a copy of the return. South Shore never filed a "return to questionnaire" to either its old or its new application. The New York Central-Indiana Harbor Belt return was one filed in connection with an application which had been dismissed by the Commission for want of prosecution.

V.

The Commission erred in that it failed adequately to state the reasons for the opposition of the Rock Island in the paragraph reading:

> "Further opposition to the granting of the authority sought is presented by the Rock Island on the grounds that they are adequately serving the Port District; that they have expended large sums of money in the construction of facilities to serve it; that they propose to and are prepared to expend further sums of money to keep themselves in a position to serve such Port District adequately; that they are entitled to retain the traffic of the Port District; that there is no reason adequate in law for the extension of the line of railroad of the applicants into territory heretofore exclu-

sively served by protestants; that the expenditures of sums of money required to be spent by applicants for the construction of the proposed extension cannot be justified either in fact or in law; and that the extension of the line of railroad of applicants is not supported by public convenience and necessity." (Sheet 6.)

[fol. 3183] The Commission failed to list the contents of Section IV, Paragraphs (d), (e), (f), and (j) of our "Answer and Protest and Intervening Petition," filed April 29, 1960, reading as follows:

"(d) In their reply to the Rock Island-Pullman Petition for Reconsideration, the applicants made the statement that 'the estimate of 27,000 cars per year proved to be grossly understated.' We filed a motion with the Commission asking that this statement be stricken because it was made outside of the record and not based on the facts, stating that the estimate of 27,000 cars had been grossly overstated. The Commission refused to allow the motion to be filed on the ground that our Motion to Strike was, in fact, a reply to a reply. The applicants should have ascertained the facts and then advised the Commission of their error, but they did not do so. The actual facts are that in 1958, only 18,604 cars were handled to and from the Port District, while in 1959, only 16,315 such cars were handled.

"(e) Experience of the Rock Island at the Port shows that the estimate of the President of the Chicago Belt that the costs at the Port would be $5.00 per car was grossly understated. The Rock Island is commencing a study which will take some little time to ascertain the actual cost per car for the year 1959, and possibly some months in 1960.

"(f) No enlargement of the facilities of the Port District has occurred since May of 1957.

"(j) The facts as set forth in the original hearing are no longer applicable, the record having been made two and a half years ago, before the St. Lawrence Waterway was opened. Conditions have changed materially. Rock Island-Pullman will be prejudiced unless a hearing is held."

In connection with the original order, we complained of the failure to set forth our contentions adequately or even [fol. 3184] correctly. The Commission has here repeated this error. How can the Commission possibly make proper findings if the contentions of the protestants and intervenors are not correctly stated?

Therefore, the Commission erred in making the statements contained in the following paragraph:

"Examination of the record discloses that these are the same arguments and contentions that were set forth in protestants' original briefs, exceptions to the examiner's proposed report, in their petitions for reconsideration, and in their oral arguments. We fully discussed and considered these contentions in our report of October 5, 1959, and again considered them in disposing of the protestants' petitions for reconsideration and reargument." (Sheet 7.)

The Commission not only erred in making the statement, but also erred in failing to accord us a hearing on the issues raised.

VI.

The Commission erred in making certain of the statements in the following paragraphs:

"Although we found the original applications to be so limited that the authority required to perfect the single plan, i.e., whereby each of the applicants would

be providing line-haul service directly into the port and additional service to the facilities now located or hereafter to be located at the harbor port, could not thereunder be authorized, orderly procedure dictated that evidence as to the entire plan be presented. To that end hearing was held to develop all the facts pertaining to the public need for additional rail service to and from the port.

"The hearing, which consumed two weeks, saw the presentation of testimony and exhibits having as their purpose proof that the present and future public convenience and necessity required the extension of the [fol. 3185] applicants' lines of railroad and operation into the harbor port area over the tracks of the Port District to serve the facilities located or to be located thereon. Applicants, through witnesses as well as through counsel, made clear that the only real purpose of the applications was to serve the industries, elevators, docks, piers, and other facilities at the harbor port by means of the tracks of the Port District. The witnesses for the Port District and tenants at the port, interveners, left no doubt but that they expected and desired applicants to use such tracks. In addition, a proposed lease agreement between the Port District and the applicants, a joint facility agreement, and trackage rights agreement, all contemplating a coordinated and practical operation for the applicants into the port, contrary to protestants' contention of being inadmissible, were received in evidence and considered by us in our original determination to accord the applicants the same right from the Port District to operate on Port District property as is now enjoyed by the Rock Island. That such complete authority could not immediately be granted under the applications as then filed, did not, in our opinion, restrict receipt of such evidentiary material as proof of 'the many advantages and benefits of applicants' service for fruition of the plans envisioned and in the process of being executed, on

schedule, by the Port District', and the impelling need for additional rail service at the port.

"Such authority as has heretofore been granted we consider as the first step in the over-all plan to provide adequate rail service to the Lake Calumet Harbor area. That it was limited was due to technical deficiency which by proper application has now been cured. We see no need for further hearing or to require the reintroduction into evidence of the same basic testimony and exhibits which were introduced at the original hearing. Nor do we deem it proper to revisit upon the applicants and intervening parties the additional time and expense incident to a long and repetitious hearing." (Sheets 7 and 8.)

[fol. 3186] We will summarize as briefly as possible the errors of the Commission as disclosed by these paragraphs.

Prejudgment of Future Applications.

What the Commission says in the quoted paragraphs as to the first step is, in fact, proof of the correctness of allegations of error set forth in our Specification of Error No. XVI in our Petition for Reconsideration of the order of October 5, 1959.

In that specification we said:

"In the section of the report entitled 'Additional Authority Required' (Sheet 46) the Commission prejudges later applications which it says must be filed. • • • The Commission also prejudges all the applications which it says it must approve for geographical extensions of service to portions of the port to be developed. It thus approves an extension of operations to a point beyond which no operation can take place without its approval on the assumption it will approve further applications. This is error." (Page 33.)

We repeat that when the Commission entered its order of October 5, 1959 it committed itself to the entry of orders of approval of future applications, whatever they might be and without a hearing.

The Commission has committed error in doing what we said it would do.

The Commission erred in saying that plans of the District are " • • • in the process of being executed, on schedule • • • ." There is no proof that they are being so executed and, in fact, they are not being so executed. No new facilities are in operation. The actual facts would have been shown at a hearing.

The Commission erred in alleging an "impelling need [fol. 3187] for additional rail service at the port." As pointed out in the dissent, the entire case of the applicants is based on alleged future convenience and necessity. If a hearing had been held we would have proved that present convenience and necessity did not require service and that there is no "impelling need."

Finally, the Commission errs when it says that "We see no need for further hearing or to require the reintroduction into evidence of the same basic testimony and exhibits which were introduced at the original hearing."

At the original hearing the Commission heard a case which, on the pleadings, was restricted to and from the gate of Lake Calumet Port. But, without benefit of any hearings, the Commission approved subsequently filed applications to operate within the port itself. In *Delta Airlines, Inc.* v. *C. A. B.*, 275 F. 2d 632 (D. C. Cir. 1959), Cert. denied, 80 S. Ct. 953 and 954, a parallel situation before the Civil Aeronautics Board brought a rebuke from the Court of Appeals for the District of Columbia Circuit. There the principal point made by petitioners on review as to an award made by the Board was that the Board could not restrict the nature and scope of the case to considerations limited to St. Louis-Florida points service, and then in that same case make an award which was for all practical purposes, one-carrier, one-plane, through

transcontinental Florida to California route, when there were pending unheard in another proceeding many applications for transcontinental service between Florida and California. Petitioners there stated that this method of reaching an award was a direct evasion of the doctrine found in *Ashbacker Radio Co.* v. *Federal Communications Commission,* 326 U. S. 327 (1945). The Court of Appeals made the following comment about the point made by petitioners (p. 639):

> "This brings us to a consideration of the practicali-
> [fol. 3188] ties of the situation in the case before us. The characteristics of a restricted-area service are entirely different from those of a transcontinental service. This is well recognized in the industry. We think the Board cannot be compelled to expand an area case: but at the same time it cannot be permitted to transform the nature of an area case without applying to it the factors which govern the case as transformed. It cannot hear an area case and, without more, make a transcontinental award."

The Evidence Which Would Have Been Introduced at a Hearing on the Applications

The Commission erred in that it did not hold a hearing on the latest applications of the applicants and erred in issuing an order based on these applications without holding a hearing at which we would have been afforded an opportunity to introduce the following evidence, among other evidence:

(a) In the Rock Island "Answer and Protest and Intervening Petition" we requested a hearing and, as one ground for the hearing, alleged that we were commencing a study to ascertain the actual cost per car for the year 1959 and possibly some months in 1960. In fact, our cost study covered the period of twleve months, April 1, 1959 to March 31, 1960.

If a hearing had been held, the Rock Island would have introduced evidence proving the following:

The actual cost incurred on account of handling each loaded car at Lake Calumet, including Calumet Harbor Terminal, during the period April 1, 1959 to March 31, 1960, including all switching and per diem costs, with credit for reclaim allowances and demurrage revenue, was $11.25 per car and, based upon the cost of Rock Island in handling cars to and from interchange points on the rails of [fol. 3189] the Pullman Railroad, if the cars had been handled to and from the Kensington Yard of the Michigan Central Railroad as the applicants indicated they might do, there would have been an additional cost for the joint facility operation of somewhere in the neighborhood of 63¢ a car. (All this in addition to the costs of rental of Port District tracks, trackage charges, and the cost of getting the cars to the Port which would have been incurred by the applicants.)

We say that the costs of the applicants at the Port would have been at least $11.25 per loaded car.

The Rock Island does not classify cars by railroads on Port District property. This is done in Rock Island yards adjacent to Port District property. Hence, this cost of classification was not included in our figure of $11.25 which covered costs at the Port District property alone. The proposal of the applicants called for this classification to be done by the joint switch engine in the Port Yard. Under the proposed plan this cost of classification whether done there or elsewhere, should be added to the $11.25 figure as cost chargeable to the joint facility.

Mr. Evans' letter (Exhibit H-129) referred to $5.00 per car loaded or empty but in our Appendix "A" attached to our original Brief, we assigned only one $5.00 charge for each revenue car.

This cost of $11.25 per car or $11.88 per car ($11.25 + 63¢) exceeds the $5.00 cost estimated by the President of the Belt Railway in his letter, Exhibit H-129, as

used by the Rock Island to show the improvidence of the proposed operation. The applicants never denied the $5.00 charge was correct, although they implied it was too high and stated that in any event the figure should not be used because it was merely an estimate. The fact is that the $5.00 charge as applied by us was too low [fol. 3190] by at least either $6.25 or $6.88, as applied to each loaded car.

Admittedly, wage rates, per diem rates and other items of expense which go into operating costs have increased since the time of the hearing in October, 1957 so that a part of the increase, but a very small one, is attributable to these increases in operating costs. As a matter of fact, the costs actually incurred during the twelve-month period were adjusted to reflect wage rates as they existed on March 31, 1960.

It is also true that cross-town switching rates and terminal switching allowances have increased since 1957. However, at the hearing we would have introduced in evidence an exhibit based upon the same factors which we used in our Appendix A attached to our original brief, in which the increases in cross-town switching charges and increases in terminal allowances would have been shown. This exhibit would have shown that the increases in revenues due to change in freight rates would have been negligible as compared with the increase of costs from $5.00 to $11.25 or $11.88 per car and that the deficits shown in Appendix A would have been greatly increased or in some cases, the balance of revenue available for other purposes shown in Appendix A would have been decreased or turned into deficits.

In their reply to our exceptions to the Examiner's report, the applicants stated (page 57):

> "The Examiner was well aware of the fluctuation in rates which would affect the revenue picture illustrated in Appendix A. A good illustration of this is the fact that subsequent to the hearing, and prior to

the filing of the proposed report, the allowances on grain had changed from those shown on Appendix A. Instead of showing a revenue of $11.07 per car to the Belt Railway for switching following a road-haul move-
[fol. 3191] ment by certain railroads, the statement should be corrected to read $11.46, and, where the revenue outbound is shown as $14.08 per car, it should be corrected to read $14.56 per car."

Inasmuch as the applicants chose these two cases as illustrative of their point as the effect of rate increases, we will use here for illustrative purposes the same cases from our Appendix A.

Against a revised revenue of $11.46, as to one set of cars as set forth by the applicants, the total cost would be increased by $6.25 (not including the 63¢ transfer cost) from $13.75 to $20.00 with a resulting deficit of $8.54 or an increase in the deficit of $5.86. Against a revised revenue of $14.56 as to the second set of cars as set forth by the applicants, the total cost would be increased by $6.25 (not including the 63¢ transfer cost) from $13.75 to $20.00, wiping out the previous 33¢ available for other expenses and substituting a deficit of $5.44. The figures given in these illustrations are not affected by the increases in the cross-town switching charges effective October 24, 1960.

Of course, the charges for diesel movement are excluded from the statement above as to costs. Under the two illustrations diesel trackage charges for the Belt would be $27.00 per day (two round trips) which could be used to arrive at annual costs but cannot be broken down on a per-car basis with the information which we worked up.

In summary, we would have shown that actual experience at the Port has proved that the original statements made by the Rock Island as to the improvidence of the proposed operation are more than borne out and that the improvidence would have been greater than that heretofore shown by us.

[fol. 3192] (b) In our study, we separated, as far as we could, foreign and domestic traffic handled to and from the port by rail. As to grain and grain products moving through the elevators, it was impossible to do this as all grain and grain products handled through the elevators by rail were mingled in the elevators with grain brought in by truck, barge, and ship, and lost their identity. There are two exceptions to this statement. Twenty-one cars of imported barley and 3 cars of imported feed moved out by rail. These 24 cars we have included below in our statement as to foreign traffic.

In this part of the statement dealing with the separation of foreign and domestic traffic, we carry into the figures cars handled at Calumet Harbor Terminal, as well as those handled to and from the Port District industries. Excluding grain and grain products handled through the elevators (except the 24 cars mentioned above), there were 8,193 cars handled to and from the Port District and Calumet Harbor Terminal. Of these 8,193 cars, 3,609 contained domestic traffic. This traffic was handled to and from the warehouses and other facilities just like any other domestic traffic handled to and from any other warehouses or facilities located on the water or any other place.

There were 4,584 cars of foreign traffic, not including grain and grain products moving through the elevators (except the 24 cars), of which 56 cars were Pennsylvania road-haul cars, 97 cars were New York Central road-haul cars, and 24 were South Shore road-haul cars.

Of the 8,176 cars of grain and grain products moving through the elevators, 15 cars were Pennsylvania inbound road-haul cars, 167 cars were inbound New York Central road-haul cars, and 23 cars were inbound South Shore cars.

Of the 8,176 cars, 492 were outbound road-haul Pennsylvania cars, 726 were outbound road-haul New York Central cars and 55 cars were outbound road-haul South Shore cars.

[fol. 3193] This evidence would prove that eastern territory traffic is extremely limited, as we contended at the former hearing, and that the railroads named above, the Pennsylvania, New York Central, and South Shore have no substantial interest in the business at the Port, particularly, export and import business.

This evidence would have completely destroyed all pretense that public convenience and necessity required the services of these applicants, particularly the Pennsylvania.

(c) We would have also introduced evidence showing actions of the Pennsylvania and New York Central Railroads in diverting traffic from the St. Lawrence Waterway bearing out the statement made by Mr. Baylis, Vice President of the New York Central (a witness at the original hearing), in a speech at the Prudential Building auditorium, Chicago, Illinois, in the latter part of 1959 that, "We do not intend to fill the St. Lawrence Waterway with concrete, but we do intend to see that it is not filled with traffic."

(d) The service of the past 3 years has proved the assertion which we made at the hearing that the Port District yard facilities are not large enough to be used for receiving and breaking up applicants' inbound trains and making up and dispatching their outbound trains. The applicants claim they could be so used, and the Commission erroneously found in their favor.

It would be necessary, as we would show at a hearing, for the applicants to use the Kensington Yard of the Michigan Central (or some other yard) for the purpose of making up and breaking up trains for which they would have to pay rent. Further, the joint facility expense would run at least 63¢ transfer cost per car.

We here point out that so far as we know, no arrangements have been made with the Michigan Central for the use of the Michigan Central yard and no application has [fol. 3194] been filed for the use of said yard. This is similar to the fact that the applicants have filed no applica-

tions to serve Calumet Harbor Terminal, located outside of the Port District, but nevertheless, the Commission has granted authority to the applicants to serve the Terminal without applications being filed.

(e) We would have shown at the hearing that our service has been adequate.

(f) We would have shown at the hearing that the St. Lawrence Seaway traffic has failed to meet applicants' expectations.

(g) In their reply to the Rock Island-Pullman Petition for Reconsideration (page 11) the applicants made the statement that "The estimate of 27,000 cars per year proved to be grossly understated." We filed a motion with the Commission asking that this statement be stricken because it was made outside of the record and not based on the facts, stating that the estimate of 27,000 cars had been grossly overstated. The Commission refused to allow the motion to be filed on the ground that our Motion to Strike was, in fact, a reply to a reply. The applicants should have ascertained the facts and then advised the Commission of their error, but they did not do so. The actual facts are that in 1958 only 18,604 cars were handled to and from Port District industries, while in 1959, after the St. Lawrence Waterway was opened, only 16,315 such cars were handled, a 12.3% decrease.

The Commission said in its order of October 5, 1959 (Sheet 32) that the conservative estimates of traffic "during the coming year" (1958) "would be approximately 27,000 carloads, which could easily increase to 76,500 carloads a year by 1962". Certainly, according to this estimate, (and this statement is supported by the record) the estimate would have called for upwards of 50,000 carloads in 1960. Thus, it is apparent that not only were the 1958 estimates [fol. 3195] grossly overstated, but the estimates for the succeeding years were even more grossly overstated. These estimates were not conservative.

At the hearing the Rock Island would have introduced evidence showing that the number of cars handled to and from the Port District industries for the years 1958 and 1959 were, respectively 18,604 and 16,315, and for the first nine months of the years, 1958, 1959, and 1960 the number of cars handled to and from the Chicago Regional Port District industries were 14,733, 14,622, and 12,946.

It is true that the loading and unloading of ships at the Port in the period from about May 18, 1960 to June 6, 1960 was prevented by strike but handling of freight to and from the elevators and warehouses by rail was not stopped. The experience of the whole 2¾ year period shows that the estimates of 27,000 cars and the other estimates were grossly overstated. This would have been proved at a hearing.

(h) During the period from April 1, 1959 to March 31, 1960 the road-haul revenue of the Rock Island to and from the properties of the Chicago Regional Port District and Calumet Harbor Terminal totaled $818,062, a major part of which would have been susceptible to loss by the Rock Island if the applicants had been operating in the Port.

The new hearing would have shown the fallacies in the applicants' testimony at the first hearing.

Private Convenience of the Applicants Is Not the Proper Test To Be Used in Determining Whether a Hearing Should Be Held.

Finally, the Commission should not have made the statement, "Nor do we deem it proper to revisit upon the applicants and intervening parties the additional time and expense incident to a long and repetitious hearing." What [fol. 3196] the Commission is saying here is, as we understand it, that a new favorable order would have been issued, no matter what the evidence was at the new hearing. The Commission is also saying that the question of whether hearings are to be held is to be determined by the convenience of the applicants and that public convenience and necessity is not the decisive factor.

VII.

The consideration of the lease attached to the new applications and discussion of it by the Commission was purely academic.

The Commission included on Sheets 9, 10 and 11 of the order of September 19, 1960, a long discussion of the proposed lease of Port District tracks attached to the Illinois Central-Pennsylvania-South Shore applications.

Almost immediately after the applicants filed their new applications, they started to discuss the terms of the proposed lease with the Port District for the first time. An agreement was reached prior to July 25, 1960.

Notwithstanding the fact that long prior to July 25, 1960 the applicants knew that the lease presented to the Commission in April, 1960 would not be executed, they let the Commission proceed to examine and pass on the lease attached to the new applications. The fact that the Commission was wasting its time in reaching a determination on a non-executed lease was apparently of no concern to the applicants.

It is an anomalous situation that the Rock Island must tell the Commission of the actions of the applicants—the Commission should get this information from the other parties.

[fol. 3197] We detail only three changes in the lease which we feel the Commission should know about.

1. The lease as presented to the Commission contained a Section 4 of Article One reading:

> "Lessor agrees to provide such additional land and to construct such additional tracks and facilities as may be requested by a majority of the Lessees and add the cost of same to the valuation base on which Lessees pay rental under this agreement. In the event any part of the Property shall in the judgment of a majority of the Lessees, not be required for railroad service, it shall be retired and the value thereof shall

be deducted from the valuation base on which Lessees pay rental under this agreement. The term Property shall reflect the changes provided for herein."

This Section appeared in the proposed lease presented at the hearing. We told the Commission that the District could not and would not accept that provision. It is inconceivable that a lessor would let the lessee add to or subtract from the leasehold interest at will. Notwithstanding the fact that it was apparent on the face of the provision that it would be unacceptable, the Commission approved it with all other provisions of the lease. Actually, it was changed in the draft of July 25, 1960 in which it was stated, not that such additional facilities would be provided but merely that they "might" be provided by the District. The provision as to removal of facilities was eliminated entirely.

2. The Commission discussed the rent of 5% on an agreed valuation (yet to be determined) and stated that the amount thus fixed would be the maximum rent and would not exceed an amount equal to $2.00 per car.

All provisions relating to agreed valuation, 5% rental and maximum rent payable were eliminated in the July 25th revision and a flat charge of $2.00 per car, with no [fol. 3198] minimum or maximum yearly payment, was the only charge to be made for rent. However, in addition, the applicants agreed to maintain all the tracks.

Under the fantastic traffic figures accepted by the Commission the rent payable would also be fantastic.

3. The proposed lease of July 25, 1960 contains this other very interesting provision:

"Such tracks will be served for account of such railroads at tariff rates comparable with like rates charged by each of the railroads at other industries served by it within the Chicago Switching District."

In its original order, the Commission stated (Sheet 22) that cross-town switching charges "no doubt will be adjusted to cover actual costs for the service provided," all this in partial answer to our charge of improvidence.

We pointed out to the Commission (page 15, Petition for Reconsideration) that if charges to the Port were increased, every charge in the Chicago District would require an increase to prevent unlawful discrimination against Port industries and that industries located elsewhere would certainly object to the raising of their rates because of improvidence at the Port.

Bearing us out, the Port District by contract proposes to prevent the raising of rates to and from the Port unless they are raised everywhere in the Chicago District.

By agreeing to this provision, the applicants actually repudiated the Commission.

Under the authority given by the Commission to raise cross-town switching rates, effective October 24, 1960, all switching charges in the Chicago Switching District are raised the same amount.

The climax to this whole discussion is that under date of September 2, 1960 the new proposed lease was withdrawn [fol. 3199] by the District because "additional information and facts * * * will necessitate revision of this document."

All that is certain is that the lease which the Commission approved will not be executed and that, the Commission to the contrary notwithstanding, we have never had an opportunity to cross-examine as to which lease, if any, will actually be executed. The Commission erred in denying us the right of cross-examination.

VIII.

The Commission erred in making the following statement:

> "The industries and tracks in the Port District are the only facilities, of any significance, that can be served by the applicants herein when using the track-

age rights or utilizing the tracks constructed pursuant to our prior authorization and approval. The needs of the shippers to and from the Port District, and of the shippers located in the harbor port area, requiring additional rail service from the applicants in order to realize the developments of the potentials of the port area have been demonstrated. The reason upon which we base the present and future public convenience and necessity have been enumerated and detailed by the applicants, substantiated by testimony during the hearings in these proceedings, and all showing the requirements and necessity of the proposed operation culminated in the findings in our prior report. Those findings are adopted and affirmed herein." (Sheets 11 and 12.)

We consider the provisions of the paragraph to be too general—a detailed reply would require a large amount of space.

Except as to one clause in the paragraph, we will simply say that we have demonstrated in this document, in our Petition for Reconsideration of the order of October 5th, [fol. 3200] 1959, and in other documents filed with the Commission that public convenience and necessity has not been proved. We incorporate herein by reference the documents previously filed.

We speak specifically here of only one clause in the paragraph. That is the clause "and of the shippers located in the harbor port area". The Commission erred in stating that the needs of these shippers for additional rail service had been demonstrated.

Not one particle of evidence was introduced as to anything dealing with needs for transportation to or from Rock Island property, Nickel Plate property, Pennsylvania property, or property owned by other private individuals in the harbor area. Every bit of testimony dealt with Port District traffic.

The Commission erred originally in letting the other railroads into the Pennsylvania-owned Calumet Harbor Terminal (the Terminal from which Pennsylvania proposed to oust Rock Island)—not only because there was no testimony to justify the order, but because they had filed no applications to serve it. The original error is here repeated.

The Commission should correct its former error—not repeat it.

IX.

The Commission erred in making the final formal findings and in issuing the certificate.

For the reasons herein shown, the Commission erred in making the final formal findings, and in issuing the certificate of September 19, 1960.

Wherefore, Rock Island-Pullman respectfully requests reconsideration and argument of the Commission's report of September 19, 1960, all to the end that each and every [fol. 3201] one of the applications submitted to the Commission be denied and requested findings of fact and conclusions of law set forth on pages 193-204 of Rock Island-Pullman brief of February 10, 1958 be adopted.

Oral Argument is requested.

Respectfully submitted,

Bruce Dwinell, Theodore E. Desch, 1025 La Salle Street Station, Chicago 5, Illinois.

John Guandolo, 1120 Connecticut Avenue, Washington, D. C.

Joseph B. Fleming, John L. Bordes, Prudential Plaza, Chicago 1, Illinois, Attorneys for Chicago, Rock Island & Pacific Railroad Company and Pullman Railroad Chicago.

Due Date: November 7, 1960.

Certificate of Service (omitted in printing).

[fol. 3202]

[File endorsement omitted]

[fol. 3204]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538*

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

APPLICANTS' REPLY TO PETITIONS FOR RECONSIDERATION FILED NOVEMBER 7, 1960—Filed December 5, 1960

Foreword

The initial application herein, filed by the Illinois Central, Pennsylvania, and South Shore railroads, is dated October 19, 1956. Subsequent applications were filed by New York Central, Michigan Central, Indiana Harbor Belt railroads, and the Belt Railway of Chicago. At the hearing, which extended from September 30, 1957, to October 11, 1957, testimony totalling 1590 pages and exhibits numbering 158 were introduced. Oral argument was later heard by the full Commission.

In its report and order of October 5, 1959, the Commission counselled applicants to perfect their applications by clarifying their requests to use the Port District tracks in [fol. 3205] order to serve the facilities at Lake Calumet Harbor. To clear the air, applicants filed supplemental applications, which the Commission promptly approved in its final order.

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* This document also embraces Finance Docket No. 19448, Michigan Central Railroad Company, et al., Construction, etc.; Finance Docket No. 19742, Belt Railway Company of Chicago Trackage Rights, etc.; and Finance Docket No. 19921, Michigan Central Railroad Company, et al., Trackage Rights.

The Rock Island and Nickel Plate railroads took the occasion to file further petitions for reconsideration, raising their total printed pages of briefs to 759. Because the arguments set forth therein were stated and restated in protestants' initial briefs, exceptions, petitions for reconsideration, etc., and weighed by the Commission in its orders, we will not burden the Commission with a lengthy reply.

Protestants have filed their appeal to the statutory three-judge court in Cleveland, which court, by agreement of the parties, awaits final disposition of the case by the Commission.

I.

Protestants were afforded every opportunity to present evidence to rebut applicants' showing that the present and future convenience and necessity warranted the granting of the applications.

As previously stated, the hearing lasted two weeks, and the only voices in opposition to the application were those of the Nickel Plate and the Rock Island. In contrast, the applications were supported by the Chicago Regional Port District, the Chicago Association of Commerce and Industry, the warehouse and marine terminal operators and grain interests, tenants of the Port District, and shippers at Lake Calumet Harbor. By every conceivable interpretation of the phrase, there was "a full and complete hearing" on the question whether, in the interest of public convenience and necessity, the applications should be granted. Until applicants, in compliance with the Commission's directive, filed their supplemental petitions to correct [fol. 3206] an alleged technical defect, no request had been made for further hearing. The request for additional hearing, even then, did not suggest protestants would produce non-cumulative testimony in support of their position but instead argued that applicants should reintroduce the evidence submitted at the initial hearing.

II.

The requests for hearing on the supplemental applications and the petitions for reconsideration were mere devices to delay the ultimate decision of the three-judge court that the Commission's order is lawful.

Grasping at any available straw, protestants charged the Commission, in its initial order, exceeded its authority in granting the applications to serve the facilities at Lake Calumet Harbor, because, as was alleged by protestants, the applications did not specifically ask for authority to operate over Port District tracks. Rock Island has repeatedly confirmed the fact that the purpose of the application and the evidence presented at the hearing was:

> "The purpose of the proposed extension was stated to be to reach the port facilities presently being constructed by the Chicago Regional Port District, thus enabling applicant to serve as a connecting line in through routes from interior points to interstate, foreign, and overseas points on shipments transshipped at the Lake Calumet Harbor of the Chicago Regional Port District." (p. 3, Brief of Chicago, Rock Island & Pacific Railroad Company, February 10, 1958)

> "Every bit of [applicants'] testimony dealt with Port District traffic." (p. 30, Rock Island's Petition for Reconsideration, November 7, 1960)

When the alleged defect was cured to the satisfaction of [fol. 3207] the Commission by the filing of supplemental applications, protestants alleged they were entitled to a new hearing, although it was admitted that the evidence presented during the two weeks of hearing concerned the need for service of the present and future facilities on the property of the Chicago Regional Port District at Lake Calumet Harbor.

Actually, the very argument presented by protestants, after the initial order, in support of the contention that it

was necessary for applicants to specifically ask for authority to use Port District tracks highlights the inconsistency of protestants' positions.

The Rock Island today operates over the Port District tracks by virtue of a verbal agreement with the Port District. Rock Island has never applied to the Commission for the authority it now claims is a prerequisite to applicants' operation.

Nickel Plate goes one step further: it flatly refuses to seek authority from the Commission although it has filed three briefs stressing the necessity of applicants' obtaining such authority.

III.

The agreement between the railroads and the Port District, except for possible minor revisions will be executed by the District.

The Commission, in its order of October 5, 1959, 307 I.C.C. 493, 525, pointed out that the Port District on October 8, 1957, requested the Nickel Plate to construct a track from its right of way east of Lake Calumet to the site of a proposed tank farm to be located just north of the confluence of the Calumet River and the Lake. The Commission further said:

> "The Nickel Plate emphasizes the fact that it has no [fol. 3208] intention of filing a section 1(18) application to serve the tank farm, because the construction involved would be purely an industrial spur and of such character as would not require approval by the Commission."

The Port District, on July 25, 1960, sent to the Nickel Plate (as well as to the applicants and Rock Island), for execution, the agreement which was drawn by the District in conformance with the Commission's order covering use by the railroads of the tracks of the Chicago Regional Port District. The District urged both the Nickel Plate and Rock Island to become signatories to the agreement. Both

railroads refused to sign and, in later communications between the District and the Nickel Plate, sufficient doubt was created in the minds of the District officials to request that the contract be withdrawn, to make Nickel Plate an exception to the contract, in order to gain assurance of immediate service to the east side of the Lake.

Nickel Plate and Rock Island seized upon this action as a possible last minute reprieve and have urged reconsideration of the order of the Commission because the agreement had not been executed. What protestants neglected to add was the simple fact that a private industry has now agreed to build the track from the tank farm to the right of way of the Nickel Plate and will request (under section 1(9) of the Act) a switch connection and service from the Nickel Plate.

Under the circumstances, there will be no need of any material change in the contract, and it will be executed in the near future.

Conclusion

Wherefore, applicants respectfully request that the Commission deny the petitions for reconsideration of its final [fol. 3209] order, which will afford the statutory three-judge court the opportunity to affirm the order of the Commission, permitting applicants to serve the facilities at Lake Calumet Harbor.

Respectfully submitted,

Robert H. Bierma, Richard T. Cubbage, Franklin C. Gagen, Richard O. Olson, Edmund A. Schroer, William J. O'Brien, Jr., Attorneys for Applicants.

135 East Eleventh Place, Chicago 5, Illinois. Date Due: December 5, 1960.

Certificate of Service [omitted in printing].

[fol. 3210]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY, et al., Trackage Rights.

ORDER DENYING PETITIONS FOR RECONSIDERATION—
April 18, 1961

Upon consideration of the record and the Commission's supplemental report and certificate dated September 19, 1960, in the above-entitled proceeding, and of (1) petitions of the Chicago, Rock Island and Pacific Railroad Company and New York, Chicago and St. Louis Railroad Company filed November 3 and November 4, 1960, respectively, requesting reconsideration and oral argument in respect to said supplemental report and certificate; and (2) the reply to said petitions filed December 5, 1960, by applicants; and

It appearing, That the decision of the Commission dated September 19, 1960, is based on adequate findings of fact supported by the record, that there has been presented no material error of facts or conclusions of law in respect to the issues raised by petitioners, and that no showing having been made warranting reconsideration of said decision;

It is ordered, That the said petitions for reconsideration including the request for oral argument be, and they are hereby, denied.

By the Commission.

Harold D. McCoy, Secretary.

(Seal)

[fol. 3211]

BEFORE THE INTERSTATE COMMERCE COMMISSION

ILLINOIS CENTRAL RAILROAD

135 East Eleventh Place, Chicago 5, Illinois

William J. O'Brien, Jr.
General Commerce Attorney

July 31, 1961

F.D. No. 19538 (and related proceedings)
APPLICATIONS OF I.C.R.R., ET AL.

TO SERVE LAKE CALUMET HARBOR
Mr. Harold D. McCoy, Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Sir:

Enclosed herewith for the Commission's file is a conformed copy of the AGREEMENT FOR THE NON-EXCLUSIVE USE OF THE CHICAGO REGIONAL PORT DISTRICT'S RAILROAD TRACKS AND FACILITIES between the Chicago Regional Port District and the following railroads:

The Belt Railway Company of Chicago,
Chicago South Shore and South Bend Railroad,
Illinois Central Railroad Company,
The Pennsylvania Railroad Company,
The New York Central Railroad Company,
Indiana Harbor Belt Railroad Company,
Chicago, Rock Island & Pacific Railroad Company, and
New York, Chicago & St. Louis Railroad Company,

which was executed by all except the last two railroads named, who were protestants in ICC Docket F.D. No. 19538.

This contract conforms with the changes specified by the Commission in its report and order dated October 5, 1959, and its supplemental report and order dated September 19, 1960.

Yours very truly,

(Signed) WM. J. O'BRIEN, JR.

ENC.
cc—All Parties of Record

[fol. 3212] CONFORMED COPY

AGREEMENT FOR THE NON-EXCLUSIVE USE OF THE CHICAGO REGIONAL PORT DISTRICT'S RAILROAD TRACKS AND FACILITIES

This Agreement made and entered into on the 12th day of June, 1961, by and between the CHICAGO REGIONAL PORT DISTRICT, a municipal corporation created by the Statute of the State of Illinois, hereinafter called "THE DISTRICT," and such of the following parties as have executed this Agreement are hereinafter referred to collectively as "THE RAILROADS":

The Belt Railway Company of Chicago,
Chicago South Shore and South Bend Railroad,
Illinois Central Railroad Company,
The Pennsylvania Railroad Company,
The New York Central Railroad Company,
Indiana Harbor Belt Railroad Company,
Chicago, Rock Island & Pacific Railroad Company, and
New York, Chicago & St. Louis Railroad Company.

WITNESSETH:

WHEREAS, THE DISTRICT is the owner of certain railroad tracks and facilities in and about Lake Calumet, in the City of Chicago, State of Illinois; and

WHEREAS, THE DISTRICT desires to develop Lake Calumet as a principal Great Lakes port serving the metropolitan area of Chicago, Illinois, and the nation, and will require the railroad services of THE RAILROADS to aid said port development; and

WHEREAS, THE CHICAGO ROCK ISLAND & PACIFIC RAILWAY is now, and has for several years last past, been using the tracks and railroad facilities heretofore constructed by THE DISTRICT for the purpose of serving the industries already located at the Port District; and

WHEREAS, THE DISTRICT in connection with certain leases it has made to the tenants within THE DISTRICT granted right-of-way easements and proposes in the future to grant further or additional right-of-way easements on its property upon which industry may construct their own tracks; and

WHEREAS, THE NEW YORK, CHICAGO & ST. LOUIS RAILWAY COMPANY yards and tracks are so located as to make possible convenient connection with such industry-owned tracks; and

[fol. 3213] WHEREAS, THE RAILROADS listed above as parties hereto are desirous of the use of THE DISTRICT'S railroad tracks and facilities to furnish necessary railroad services, and THE DISTRICT is agreeable to such use, all upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

COVENANTS OF THE DISTRICT

SECTION 1. The railroad tracks, facilities and appurtenances covered by this agreement shall not include any industry-owned tracks on the property of the Port District, and this agreement is made subject to any and all rights which the Chicago Rock Island & Pacific Railroad may have in and to the railroad tracks, facilities and appurte-

nances belonging to THE DISTRICT and located on District property. Furthermore, this agreement is not intended to and shall not grant to THE RAILROADS, parties hereto, any exclusive right in or use of the railroad tracks, appurtenances and/or facilities of THE DISTRICT. THE DISTRICT reserves the right to grant further or additional right-of-way easements upon its property upon which industries heretofore or hereafter located on District property may construct their own tracks, facilities and appurtenances.

SECTION 2. THE DISTRICT agrees to the use by THE RAILROADS of the existing railroad tracks and facilities owned by THE DISTRICT in the vicinity of Lake Calumet, in the City of Chicago, Illinois, and generally situated north of 130th Street and east of Doty Avenue, more particularly described on attached Exhibit "A."

SECTION 3. THE DISTRICT agrees to provide for the use by THE RAILROADS of all existing tracks and facilities now owned by THE DISTRICT, including but not limited to tracks and facilities located on property covered by leases or contracts with the Pullman Railroad Company (except that portion of railroad tracks over which the Pullman Railroad Company has exclusive rights pursuant to written agreement with the Chicago Regional Port District, dated February 3, 1956) and the Philadelphia, Baltimore & Washington Railroad Company (except that portion of land in which the Philadelphia, Baltimore & Washington Railroad Company has exclusive rights for railroad purposes pursuant to written agreement with the Chicago Regional Port District, dated April 1, 1957).

SECTION 4. THE DISTRICT reserves the right to permit any other person, company, corporation or association to construct, lease or operate railroad facilities on its property for the purpose of serving Lake Calumet District for railroad purposes when such construction, leasing or opera- [fol. 3214] tion is approved by the Interstate Commerce Commission to the extent such approval is legally required.

The terms and conditions of such use by others shall be determined by THE DISTRICT, as hereinafter set forth in Section 5, Article III, or as may be fixed and approved by the Interstate Commerce Commission to the extent that it has jurisdiction.

SECTION 5. THE DISTRICT may, upon the application of the majority of THE RAILROADS, provide additional tracks and facilities as may be so requested by said railroads, and all such railroad tracks, facilities and appurtenances so hereinafter constructed and owned by THE DISTRICT shall be included in this agreement.

ARTICLE II

COVENANTS OF THE RAILROADS

SECTION 1. THE RAILROADS agree to the use of THE DISTRICT'S railroad tracks and facilities.

SECTION 2. THE RAILROADS agree to maintain and renew in proper operating condition all tracks, facilities and appurtenances covered hereby at their sole cost and expense, except as otherwise herein provided, and to furnish railroad service adequate to meet reasonable and practical requirements of industries, tenants of THE DISTRICT to be served by them.

SECTION 3. THE RAILROADS agree to operate said railroad tracks and facilities as a joint facility. All tenants of THE DISTRICT having railroad industrial tracks connected with the tracks and facilities covered hereby will be shown in the Director of Industries in the Chicago Switching District Tariffs as being served by each of THE RAILROADS. Such tracks will be served for account of such railroads at lawfully established tariff rates.

SECTION 4. THE RAILROADS agree to permit all other railroads having both Interstate Commerce Commission and THE DISTRICT'S approval, to the extent required by law, to become parties to this agreement upon receipt of

a written application from such other railroads, provided such applicant railroads agree to be bound by the terms of this agreement in the same manner as though they had been original parties to such agreement.

SECTION 5. THE RAILROADS agree to be jointly and severally obligated to THE DISTRICT under this agreement. Should any one or more of THE RAILROADS fail to meet its or their obligations hereunder, such defaulting party or parties shall forfeit all rights hereunder and the remaining parties shall be bound by the terms hereof. Such defaulting party or parties shall also forfeit any right to future participation in the use of said tracks and facilities and may only be readmitted by first obtaining ap- [fol. 3215] proval so to do from the Interstate Commerce Commission, THE DISTRICT and the other railroad parties hereto not so in default.

ARTICLE III

MUTUAL COVENANTS OF THE DISTRICT AND THE RAILROADS

SECTION 1. THE RAIROADS, on cars delivered or received by THE RAIROADS agree to pay to THE DISTRICT for the use of its tracks and facilities covered hereby the following amounts of money:

(a) Two ($2.00) Dollars for each and every partially or fully loaded revenue car that enters upon the property of THE DISTRICT over the tracks and facilities covered hereby;

(b) The sum of Two ($2.00) Dollars for each and every partially or fully loaded revenue car that leaves the property of THE DISTRICT over such tracks and facilities; and

(c) Two ($2.00) Dollars for each and every car, empty or otherwise, coming upon the property of THE DISTRICT in connection with movements of any kind other

than result in compensation to THE DISTRICT under (a) or (b) above, provided, however, that there shall be no payment made to THE DISTRICT for any empty car entering the property of THE DISTRICT for an outbound revenue movement or leaving said property after an inbound revenue movement covered by (a) or (b) above.

It shall be the duty of THE RAILROADS to keep accurate check and maintain proper records reflecting the number of railroad cars, and to promptly make payment to THE DISTRICT of the total amount due as a result of such usage. In this respect, the books and records of THE RAILROADS shall be open for inspection by THE DISTRICT's representative at all reasonable times. Before this agreement shall become operative, THE RAILROADS which are parties hereto, shall submit to THE DISTRICT an agreement, in form and substance satisfactory to it, between said railroads providing for a centralized supervision of the operation, maintenance and repair of THE DISTRICT's track, appurtenances and facilities covered hereby; and THE DISTRICT retains the right to require, from time to time, changes and modifications in such agreement when, in its opinion, a coordinated service in the use of its tracks and facilities makes such changes and modifications necessary.

[fol. 3216] Per diem charges and accruals shall be the responsibility of THE RAILROADS and THE RAILROADS shall save THE DISTRICT harmless from such charges and accruals during the entire term of this Agreement.

On or before the 15th day of each and every calendar month each railroad which is a party hereto shall report to THE DISTRICT in writing the number of cars subject to charges delivered or received by such railroad upon the tracks covered hereby during the preceding calendar month. Payment shall be made to THE DISTRICT not later than the 30th day of the month in which each such report is due.

SECTION 2. THE DISTRICT shall pay for, assume and be liable for all taxes, if any, levied or assessed against the tracks and facilities covered hereby. THE RAILROADS shall pay for, assume and be liable for all taxes, if any, levied or assessed against their property.

SECTION 3. THE DISTRICT shall have the right at any time to construct, maintain, renew, use and remove grade crossings for vehicular traffic over and across said tracks and facilities covered hereby at the sole cost and expense of THE DISTRICT. The location and number of such grade crossings shall be in the sole discretion of THE DISTRICT. THE RAILROADS shall, however, construct any and all grade crossings over roadways on THE DISTRICT's premises as may be required to make connection with the said tracks, facilities and appurtenances covered hereby and the cost of construction, maintenance, renewal or removal thereof shall be solely borne by THE RAILROADS. THE DISTRICT shall have the right to determine the locations and approve the crossings constructed by THE RAILROADS. THE RAILROADS agree that they will abide by all known safety regulations, together with all reasonable rules and regulations that may be imposed by THE DISTRICT in the use of the property.

SECTION 4. The parties hereto agree that all liability for injury to or death of persons and loss and damage to property arising out of the sole fault or negligence of THE RAILROADS shall be solely borne by THE RAILROADS; that all liability arising from the sole fault or negligence of THE DISTRICT, its agents or employees, shall be solely borne by THE DISTRICT: and, all liability arising from joint fault or negligence of THE DISTRICT and THE RAILROADS shall be borne equally by THE DISTRICT and THE RAILROADS.

SECTION 5. THE DISTRICT shall have the right to make separate and distinct agreements with other railroads which are not parties hereto permitting such other railroads to use all tracks, facilities and appurtenances owned

by THE DISTRICT, but in making such separate and distinct agreements with other railroads, THE DISTRICT shall require reasonable contribution by such other railroad parties towards maintenance, repair and removal of tracks, facilities and appurtenances used in common with the parties [fol. 3217] hereto. Any subsequent agreements shall be on terms and conditions reasonably comparable to this agreement.

SECTION 6. THE RAILROADS shall not have the right to assign this agreement without the prior written consent of THE DISTRICT.

SECTION 7. THIS AGREEMENT shall be in effect and binding upon the parties hereto, their successors or assigns when operation is commenced and remain in effect for a period of thirty-five (35) years thereafter, or to July 1st, 1995, whichever date is sooner, provided, however, in the event of default hereunder by THE RAILROADS with respect to any of the terms and provisions hereof and the continuation of such default for more than sixty (60) days after written notice from THE DISTRICT of the existence of such default, THE DISTRICT may elect to cancel this agreement by giving thirty (30) days notice in writing of such cancellation to each railroad then a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CHICAGO REGIONAL PORT DISTRICT

/s/ FLOYD G. DANA

(Seal)

ATTEST:

/s/ WILLIAM VELLENGA
Secretary

THE BELT RAILWAY COMPANY
OF CHICAGO
/s/ L. A. EVANS
President

(Seal)

ATTEST:

/s/ J. R. EKHOLM
Secretary

CHICAGO SOUTH SHORE &
SOUTH BEND RAILROAD
/s/ W. P. COLITON
President

(Seal)

ATTEST:

/s/ LLOYD E. BANTZ
Secretary

ILLINOIS CENTRAL RAILROAD COMPANY
/s/ J. M. TRISSAL
Vice President

(Seal)

ATTEST:

/s/ A. L. CHURCH
Secretary

[fol. 3218]

THE PENNSYLVANIA
RAILROAD COMPANY
/s/ H. W. LARGE
Vice President and
Regional Manager

(Seal)

ATTEST:

/s/ W. A. HARING
Assistant Secretary

NEW YORK CENTRAL
RAILROAD COMPANY

/s/ D. CAMPBELL
Vice President

(Seal)

ATTEST:

/s/ G. C. HOLPP
Assistant Secretary

INDIANA HARBOR BELT
RAILROAD COMPANY

/s/ D. CAMPBELL
Vice President

(Seal)

ATTEST:

/s/ G. C. HOLPP
Assistant Secretary

CHICAGO ROCK ISLAND &
PACIFIC RAILROAD COMPANY

.....
President

ATTEST:

.....
Secretary

NEW YORK, CHICAGO & ST. LOUIS
RAILROAD COMPANY

.....
President

ATTEST:

.....
Secretary

[fol. 3225]

BEFORE THE INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Bureau of Finance

Washington 25, D. C.

C
O
P
Y

In reply refer to:
Finance Docket No. 19538
August 8, 1961

Mr. William J. O'Brien
General Commerce Attorney
Illinois Central Railroad
135 E. 11th Place
Chicago 5, Ill.

Dear Mr. O'Brien:

This will acknowledge receipt of your letter of July 31, 1961, enclosing a conformed copy of the agreement for the non-exclusive use of the Chicago Regional Port District's railroad tracks and facilities, dated June 12, 1961, executed by all interested parties with the exception of the Chicago, Rock Island & Pacific Railroad Company and the New York, Chicago & St. Louis Railroad Company.

It is noted that the submitted lease, Article I, Section 4, reserves the right to the Chicago Regional Port District to permit any other person, company, corporation or association to construct, lease or operate railroad facilities on its property for the purpose of serving the Lake Calumet District, when approved by the Interstate Commerce Commission, in conformity with the changes to the agreement, as specified by the Commission in its order of October 5, 1959.

The submitted lease will be filed as part of the record in this matter.

Very truly yours,

(Signed) V. V. BAKER
V. V. BAKER
Director

[fol. 3226]

BEFORE THE INTERSTATE COMMERCE COMMISSION

(Letterhead of Chicago, Rock Island and Pacific Railroad Company, Chicago 5, Ill.)

August 9, 1961

RE: F.D. No. 19538 (and related proceedings)

APPLICATIONS OF I.C.R.R., ET AL.
TO SERVE LAKE CALUMET HARBOR

Honorable Harold D. McCoy, Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Sir:

Under date of July 31, 1961, Mr. William J. O'Brien, Jr., attorney for the applicants in the above entitled proceeding, forwarded to the Commission for the Commission's file a conformed copy of the "Agreement For The Non-Exclusive Use Of The Chicago Regional Port District's Railroad Tracks And Facilities" between the Chicago Regional Port District and the applicants.

The last paragraph of the letter submitting the contract reads "This contract conforms with the changes specified by the Commission in its report and order dated October 5,

1959, and its supplemental report and order dated September 19, 1960."

Because Mr. O'Brien's letter is not an application for approval of the contract submitted with it, the instant letter is not to be construed as a "reply", as that word is used in the rules of the Commission. If, however, the Commission should determine to consider Mr. O'Brien's letter as an application for approval, then we ask that we be notified of the determination of the Commission to that effect and that we be given an opportunity to reply in full. We emphasize our understanding that the only purpose of the applicants, according to the letter, is to furnish a contract for the Commission's file.

[fol. 3227] In April and May of 1960 the applicants filed separate applications asking approval of a contract which was submitted to the Commission with their applications.

In a reply to the applications, we advised the Commission that the contract which was submitted with these applications had not been submitted to the Port District for its agreement and contained provisions which, in our opinion, the Port District would not and could not accept. In its Order of September 19, 1960, the Commission said in part "Whether the lease will be finally executed by the parties is for their determination and there is no indication of the parties that such lease would not be executed".

In our petition for reconsideration of the Commission's Order of September 19, 1960, we pointed out to the Commission that after the proposed contract had been submitted to the Commission for approval, it had been submitted to the Port District and rejected; that a new agreement had been reached and then withdrawn and that, as of the date of our petition for reconsideration, no agreement had been reached by the Port District and the applicants as to the terms of the new contract.

Now, 15 months after the applications of April and May, 1960, were filed, the applicants have filed a conformed

copy of an executed contract stating that "This contract conforms with the changes specified by the Commission in its report and order dated October 5, 1959, and its supplemental report and order dated September 19, 1960."

This statement is not factual.

The differences between the contract approved by the Commission and the contract now presented for filing by the applicants are substantial in character but are so numerous that we will not attempt to specify them. We will simply state that the changes are numerous. On this point we call the Commission's attention to only one of these changes, namely, the elimination of the provision which called for a valuation of the tracks to be used as a basis for interest rental as well as a ceiling on the payments to be made by the applicants.

[fol. 3228] The contract also contains a provision that it shall not become operative until an agreement as to the method of operating thereunder is reached by the railroad signatories and approved by the District. We do not know whether such an agreement has been made and approved. Thus we do not know whether the agreement is operative. But we call particular attention of the Commission to the fact that the contract now before the Commission contains no provision calling for the Commission's approval.

The operating agreement will determine the method by which the rights conferred by the contract on the applicants will be exercised. Thus the two documents considered together—one conferring rights and the second describing the method of their exercise, the execution and the approval of the second document being necessary to make the first operative—constitute or will constitute the record of the whole understanding of the parties and in fact, though not in form, are or will be one document. Indeed the contents of both documents might, with greater simplicity, have been incorporated in one document.

From the contents of both of the preceding paragraphs it follows that the applicants have forwarded to the Commission only one-half of their agreement. The half they have forwarded is meaningless without the other half. Even if the contract now before the Commission had accompanied an application in proper form, the applicants would have presented an incomplete document.

Of course, we could not object to the placing of Mr. O'Brien's letter and the conformed copy of the contract in the Commission's file, provided such placing does not carry with it any implication of approval by the Commission. In no event can the Commission approve the contract, since no application has been filed; but if, for any reason, the Commission should consider Mr. O'Brien's letter an application, we ask for the opportunity to reply.

The contract, as forwarded to the Commission, provides a place for execution by the Rock Island and the Nickel [fol. 3229] Plate. The Rock Island refused to execute the contract not only because certain of the terms were not acceptable to it, but also because execution of the agreement by the Rock Island would have meant its capitulation and agreement that the applicants could serve the port.

Very truly yours,

(signed) T. E. Desch
Attorney for Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company

cc: All Parties of Record

[fol. 3230]

BEFORE THE INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
BUREAU OF FINANCE
WASHINGTON 25, D.C.

IN REPLY REFER TO:
Finance Docket No. 19538
August 16, 1961

Mr. T. E. Desch, Attorney
Chicago, Rock Island & Pacific
Railroad Company
La Salle Street Station
139 West Van Buren Street
Chicago 5, Ill.

Dear Mr. Desch:

This will acknowledge receipt of your letter of August 9, 1961, which constitutes in brief a reply to a letter and copy of an "Agreement for the Non-Exclusive Use of the Chicago Regional Port District's Railroad Tracks and Facilities" forwarded to the Commission by Mr. William J. O'Brien, attorney for the applicants in the above-numbered proceeding.

You express concern as to whether Mr. O'Brien's letter will be considered as an application for approval of the agreement, and you request to be given an opportunity to reply in full to the letter in the event the Commission decides to consider it as such an application.

The letter has not been construed as an application for approval of the agreement, and my acknowledgement thereof should not be considered as indicating approval.

Very truly yours,

/s/ V. V. BAKER
V. V. BAKER
Director

cc: Mr. William J. O'Brien
General Commerce Attorney
Illinois Central Railroad
135 E. 11th Place
Chicago 5, Ill.

[fol. 3231]

BEFORE THE INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
BUREAU OF FINANCE
WASHINGTON 25, D.C.

IN REPLY REFER TO:
Finance Docket No. 19538
November 9, 1961
[Stamp]

Mr. William J. O'Brien
General Commerce Attorney
Illinois Central Railroad Company
135 E. 11th Place
Chicago 5, Ill.

Dear Mr. O'Brien:

This is in further reference to your letter of July 31, 1961, enclosing a conformed copy of the agreement for the non-exclusive use of the Chicago Regional Port District's railroad tracks and facilities, dated June 12, 1961, in connection with the above-numbered proceeding.

As stated in my letter of acknowledgment, dated August 8, 1961, the submitted lease has been filed as part of the record in this matter. However, a thorough examination of the submitted conformed agreement reveals numerous differences between it and the proposed lease agreement approved by the Commission by supplemental report and order dated September 19, 1960, 312 I.C.C. 277.

Although some of the changes in the conformed copy of the lease agreement appear to consist of immaterial rewordings of the approved agreement, there are certain substantive changes, among others the change in the basis for computing rental payments, which in my opinion require approval of the Commission before the agreement lawfully may be made effective. This is particularly true in view of the statement on page 11 of the mimeographed report (page 283 of the printed report) that any changes in terms or provisions of the lease, or further modification thereof, would require the Commission's prior approval and authorization.

[fol. 3232] In view of the foregoing, the applicants in this proceeding may wish to consider the filing of an appropriate petition requesting approval of the modifications proposed. Kindly advise what action, if any, will be taken in the matter.

Very truly yours,

V. V. Baker
Director

Copy to all parties

[fol. 3234]

BEFORE THE INTERSTATE COMMERCE COMMISSION

F. D. No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

PETITION FOR APPROVAL OF AN AGREEMENT FOR THE NON-EXCLUSIVE USE OF THE CHICAGO REGIONAL PORT DISTRICT'S RAILROAD TRACKS AND FACILITIES AS MODIFIED—November 27, 1961

By an order dated September 19, 1960, the Commission approved a lease agreement entered into between the Chicago Regional Port District, a municipal corporation, and the railroad applicants herein. As part of its decision, the Commission stated:

> "Any change in the terms or provisions of the lease subsequently made by the parties, or further modification . . . would require our prior approval and authorization."

The Chicago Regional Port District and the railroads, on June 12, 1961, entered into a revised agreement,* which [fol. 3235] revision included the protestants as signatories and made some minor technical changes. By a letter dated November 9, 1961, Mr. V. V. Baker, Director of the Bureau of Finance, suggested the filing of a petition for approval of these modifications. The applicants herewith petition that the revised agreement, copy of which is attached, be approved forthwith and without hearing, since the matters

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* The revised agreement is headed: "AGREEMENT FOR THE NON-EXCLUSIVE USE OF THE CHICAGO REGIONAL PORT DISTRICT'S RAILROAD TRACKS AND FACILITIES."

involved are in no way disputed and do not involve any public interest.

The changes in the revised agreement are as follows:

1. In the original agreement, the term "Lessees" refers to six named railroads, which were the applicants. In the revised agreement, the term "Railroads" refers to those six named railroad applicants and in addition the CRI&P Railroad and the NYC&StL Railroad, the protestants.

2. The revised agreement provides for non-exclusive "use" by the Railroads of certain facilities of the District, whereas the original agreement used the term "lease" throughout. The change in language is made to conform to Illinois property law, thus to eliminate any reference to leasing land.

3. Section 1 of Article I, although new, merely recites certain features of the agreement, i.e. agreement is not [fol. 3236] intended to cover industry-owned tracks, nor to affect any rights heretofore held by the CRI&P Railroad, nor to grant any exclusive privileges in the property.

4. Sections 2 through 5 of Article I of the revised agreement are substantially the same as Sections 1 through 4 of Article I of the original agreement, except that these provisions reflect changes in compensation as spelled out in detail in Article III.

5. Sections 1 through 5 of Article II of the revised agreement are substantially the same as Sections 1 through 5 of Article II of the original agreement. Section 6 of the original agreement, providing that on termination of the lease the property should be returned in good order, has been dropped.

6. Sections 1 and 2 of Article III of the original agreement provided for rental based on 5% of current valuation of the leased property, with a maximum payment of the equivalent of $2 per car, loaded or empty, or locomotive handled to or from the property in a calendar year. Sec-

tions 1 and 2 of Article III of the revised agreement, attached to the Supplement to Application and modified to the extent of providing for a maximum payment of $2 per loaded car, are now deleted. Section 1 of Article III of the final agreement provides for payments of $2 per loaded car with no reference to a property valuation. This modification fixes the rental basis permanently for the duration of the agreement so that future changes in the valuation of the port property will not affect the rental [fol. 3237] basis. Accounting difficulties under this basis are virtually eliminated.

7. Sections 2, 3, and 4 of Article III of the revised agreement correspond to Sections 3, 4, and 5 of Article III of the original agreement, with minor language changes.

8. Section 5 of Article III of the revised agreement is new and provides that other railroads may enter the District on reasonable terms.

9. Sections 6 and 7 of Article III of the original agreement have been modified slightly, appearing as Sections 6 and 7 of Article III of the revised agreement. Under the revised Section 6, the Railroads may not assign their rights under the agreement without the prior written consent of the District. The revision in Section 7 merely changes the duration of the agreement.

Wherefore, the Railroads petition the Commission to approve forthwith the revised agreement for the reasons stated.

Respectfully submitted,

Robert H. Bierma, Richard T. Cubbage, Franklin C. Gagen, Richard O. Olson, Edmund A. Schroer, William J. O'Brien, Jr., Attorneys for Applicants.

135 East Eleventh Place,
Chicago 5, Illinois.
Dated: November 27, 1961.

[fol. 3238] Certificate of Service (omitted in printing).

[fol. 3252]

BEFORE THE INTERSTATE COMMERCE COMMISSION

F. D. No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

Petition for Approval of an Agreement for the Non-Exclusive Use of the Chicago Regional Port District's Railroad Tracks and Facilities as Modified.

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1. MOTION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY THAT THE COMMISSION DIRECT THE APPLICANTS IN THE ABOVE-ENTITLED PROCEEDING TO FURNISH ADDITIONAL INFORMATION TO PERMIT ROCK ISLAND-PULLMAN TO REPLY TO APPLICANTS' PETITION FOR APPROVAL OF A CERTAIN AGREEMENT.

2. REQUEST OF ROCK ISLAND-PULLMAN FOR ADDITIONAL TIME IN WHICH TO REPLY TO SAID PETITION—Filed December 11, 1961

Come now Chicago, Rock Island and Pacific Railroad Company (Rock Island) and Pullman Railroad Company (Pullman) and respectfully move the Commission to direct the applicants to furnish additional information and, for grounds for said motion, allege that the information furnished in the application is so insufficient, vague, indefinite, and contrary to the facts that the Commission could not use it as a basis for action and, for the same reasons, that Rock Island-Pullman are unable adequately to reply to said petition.

[fol. 3253] Specifically, respondents Rock Island-Pullman state:

1. In Section 6 of the petition dated November 27, 1961, applicants gave, as the only reason for the elimination of the provision calling for a ceiling on the payments to be made, the statement that "Accounting difficulties under this basis are virtually eliminated."

The fact is that at the outset of the negotiations with the Port District concerning this agreement, the applicants proposed the retention of Sections 1 and 2 of Article III of the agreement approved by the Commission providing for a ceiling on the payments to be made by the applicants for the use of the tracks, while the District proposed a minimum guarantee on the amount to be paid.

The minimum amount to be guaranteed and the maximum amount to be the ceiling in each case was an amount equal to interest at 5% on the value of the tracks to be used. The applicants were unwilling to agree to the minimum and the matter was finally compromised by the District's withdrawing its request for the minimum amount to be guaranteed and the applicants' withdrawing their request for the ceiling. Accounting difficulties were not the reason for the deletion of the provision as to the ceiling.

In view of the deletion of the provision as to the ceiling on payments and, particularly in view of the emphasis which the Commission placed upon the provision for the [fol. 3254] ceiling in its order of September 19, 1960, the applicants should be required to state:

(1) (a) The value of the present tracks to be used.

(b) The anticipated expenditures by the Port District by years for the next five years for tracks which will be used by the applicants.

(2) The payments which the applicants anticipate will be made annually to the District at the rate of $2 per car by years over the period of the next five years.

Since Section 5, Article III of the executed contract provides that the District shall have the right to make separate and distinct agreements with other

railroads but that any subsequent agreements shall be on terms and conditions reasonably comparable to this agreement it is assumed that the applicants, if and when they operate into the Port District, would expect Rock Island-Pullman and Nickel Plate to pay a comparable rental. Therefore, they should include, in the computation of the gross sums to be paid annually to the District, an estimate of the sums which would be paid by the Rock Island and Nickel Plate.

[fol. 3255] With this information before it, the Commission should be able to evaluate the effect of the deletion of the provision for a ceiling on payments.

2. The applicants agree to maintain the tracks owned by the District. Statements should be made by the applicants as to the cost of maintaining present tracks and new tracks which it is anticipated the Port will build in the future.

3. In the enumeration of the changes made in the agreement, the applicants failed to call the attention of the Commission to that part of the provision of Article III, Section 1, reading "Before this agreement shall become operative, The Railroads which are parties hereto, shall submit to The District an agreement, in form and substance satisfactory to it, between said railroads providing for a centralized supervision of the operation, maintenance and repair of The District's track, appurtenances and facilities covered hereby; and The District retains the right to require, from time to time, changes and modifications in such agreement when, in its opinion, a coordinated service in the use of its tracks and facilities makes such changes and modifications necessary".

We do not know whether such an agreement has been made and approved. Thus we do not know whether the agreement now before the Commission is operative accord- [fol. 3256] ing to its terms. If it has been executed and

approved, it should be submitted to the Commission for approval.

The operating agreement will determine the method by which the rights granted the applicants by the agreement now before the Commission will be exercised. Thus the two documents considered together—one conferring rights and the second describing the method of their exercise, the execution and the approval of the second document being necessary to make the first operative—constitute or will constitute the record of the whole understanding of the parties and in fact, though not in form, are or will be one document. Indeed the contents of both documents might, with greater simplicity, have been incorporated in one document.

It follows that the applicants have submitted to the Commission only one-half of their agreement. The half they seek approval of is meaningless without the other half. The applicants have presented an incomplete document. Full information should be given.

4. The applicants should give information showing why the $2.00 figure is used and not some other figure.

Near the end of the introduction to the petition, the applicants say that the petition should be granted forthwith and without a hearing "since the matters involved are in no way disputed and do not involve any public interest". [fol. 3257] If this statement were true, the Commission should give little more than cursory attention to this motion for disclosure of the facts.

However, the statement is not true. First, if this matter does not involve any public interest it has no business before the Commission. However, the Commission has already determined that public interest is involved by requiring the filing of the petition for the approval of the contract.

Further, Rock Island-Pullman have not only the overall interest as carriers in the field which justified their intervention at the inception of these proceedings, but they have

a specific and acute interest in this contract. The Commission has also recognized that the interest of Rock Island-Pullman is a public interest.

The Section (Section 5, Article III) dealing with the right of the District to make contracts with other railroads for the use of its tracks closes with the sentence "Any subsequent agreement shall be on terms and conditions reasonably comparable to this agreement". The applicants propose that the Commission will approve a contract which they hope will set a pattern which Rock Island-Pullman must follow. The sentence from Section 1, Article III, quoted above in paragraph 3 of this motion, shows that the [fol. 3258] applicants propose to make an agreement on methods of operations which will set the pattern for Rock Island and Pullman to follow. They do not even intend to present this operating contract to the Commission for approval even though it must be executed by the applicants and approved by the District before the contract now before the Commission can go into effect.

The public interest and the interest of the Rock Island-Pullman cannot be adequately considered by the Commission unless the facts are adequately presented to it. The rights of Rock Island-Pullman cannot be protected unless they are adequately informed of that against which they must defend. The applicants should be required to make a full disclosure of the facts. It is for these reasons that this motion for additional information and disclosure of facts should be granted.

Wherefore, in view of the above and foregoing, Rock Island-Pullman respectfully move the Commission to require the applicants to make a full disclosure with respect to the matters set forth above.

Request For Extension Of Time To Reply

Rock Island-Pullman further request that the Commission grant them an extension of time in which to file a reply to the petition of the applicants, said extension to be for a

period of 20 days after (a) the information requested is [fol. 3259] furnished at the direction of the Commission, if the motion is granted, or (b) 20 days after the Commission denies this motion for the furnishing of additional information, if the Commission denies the motion.

Respectfully submitted,

Bruce Dwinell, Theodore E. Desch, 1025 LaSalle Street Station, Chicago 5, Illinois;

John Guandolo, 1120 Connecticut Avenue, Washington, D. C.;

Joseph B. Fleming, John L. Bordes, Prudential Plaza, Chicago 1, Illinois,

Attorneys for Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company.

Dated at Chicago, Illinois
this 7th day of December, 1961.

[fol. 3260] Certificate of Service (omitted in printing).

[fol. 3262]

BEFORE THE INTERSTATE COMMERCE COMMISSION

F. D. No. 19538, et al.

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

REPLY TO PETITION DATED NOVEMBER 27, 1961 OF APPLICANTS FOR APPROVAL OF AGREEMENT FOR USE OF RAILROAD TRACKS AND FACILITIES—December 15, 1961

Comes now The New York, Chicago and St. Louis Railroad Company (hereinafter called "Nickel Plate"), and respectfully files this its reply to applicants' petition dated November 27, 1961 (served November 30, 1961) for approval of an agreement dated June 12, 1961 for the use of railroad tracks and facilities of The Chicago Regional Port District.

Background

This proceeding commenced over five years ago with the filing of applications in October, 1956 and in April and September, 1957 for authority to construct and operate *up to* the Lake Calumet, Chicago development of The Chicago Regional Port District. Hearings were held in October, 1957, and on the basis of evidence then produced the Commission not only approved the construction and operation *up to* the port, but also an operating arrangement *within* the port area and, with some modification, a proposed lease of port facilities by the applicants.
[fol. 3263] Said proposed lease was approved by reports and orders dated September 19, 1960 and April 25, 1961, and the report of September 19, 1960 states in part:

"Any change in the terms or provisions of the lease subsequently made by the parties, or further modification . . . . . would require our prior approval and authorization."

The petition of November 27, 1961 seeks approval of the agreement of June 12, 1961 because it differs substantially from the proposed lease previously approved by the Commission.

The entire matter, up to this latest development, is before a federal court in Cleveland, Ohio, for review.

Nickel Plate's Position

Nickel Plate here reasserts all the various contentions made by it with respect to deficiencies and errors in the various Commission reports and orders in these proceedings. It contends particularly that the applicants have failed to file appropriate applications, that they have never sustained their burden of proof of public convenience and necessity, and that for the Commission now to approve the instant petition would constitute further error. Specifically, Nickel Plate denies the assertions made in the petition of November 27, 1961 that the revised agreement now before the Commission "made some minor technical changes" in the lease heretofore approved and that the petition and the agreement of June 12, 1961 may "be approved forthwith and without hearing, since the matters involved are in no way disputed and do not involve any public interest."

[fol. 3264] Nickel Plate further contends that said petition, which was filed as a substitute for a supplemental application, is deficient on its face for three major reasons:

1. It fails to include public interest considerations and other data required in applications and returns to questionnaire.

2. It fails to set forth the operating arrangements and the Port District's approval of the same, which the agree-

ment of June 12, 1961 states are conditions precedent to its effectiveness.

3. It fails to seek approval by the Commission of such operating arrangements to the extent they differ from those heretofore approved. By pointing out this deficiency, Nickel Plate does not admit that the Commission's previous approval of operating arrangements was proper.

In the event the applicants offer additional data on these or other matters, Nickel Plate reserves the right to reply to the same.

There Are Substantial Differences Between the Lease Previously Approved by the Commission and the Contract Now Submitted for Approval.

There are two basic changes in the texts of the documents involved:

1. *As to consideration.*

The consideration set forth in the lease previously approved by the Commission provided for a rental based on 5% of an unknown valuation of the leased property, with a maximum payment equal to $2.00 per car loaded or empty. The current agreement in Article III, Section 1 now provides for the payment of $2.00 per car as a fixed [fol. 3265] minimum-maximum charge. The total consideration is, therefore, to be computed directly from the number of cars handled, and unless the Commission is informed as to the volume of traffic involved, it has no way of ascertaining what consideration will be paid for the Port District over the thirty-five year term of the new agreement.

At one time, it will be recalled, an estimate was submitted in this proceeding in behalf of the applicants that the railroads would eventually handle up to 350,000 carloads a year when both sides of the Lake are built up. Another estimate was that approximately 76,500 carloads would be handled annually by 1962. The Commission cited

these estimates on Sheet 32 of the report of October 5, 1959 and relied on them as evidence of need for the applicants' services. On the basis of such traffic estimates, payment for the use of Port District facilities at the rate of $2.00 per car, plus assumption of all maintenance expenses (Article II, Section 2), would clearly constitute an unreasonable consideration. On the other hand, if the traffic volume has not developed to such proportions there is clearly no need for applicants' services. The failure of the applicants' petition to set forth such evidence as to traffic volume, so that the Commission can determine the reasonableness of the consideration to be paid and weigh public convenience and necessity, illustrates the first of the deficiencies of the petition referred to earlier.

2. The other substantial change in the agreement submitted for approval is also found in Article III, Section 1, stating
[fol. 3266]

> "Before this agreement shall become operative, THE RAILROADS which are parties hereto, shall submit to THE DISTRICT an agreement, in form and substance satisfactory to it, between said railroads providing for a centralized supervision of the operation, maintenance and repair of THE DISTRICT's track, appurtenances and facilities covered hereby; and THE DISTRICT retains the right to require, from time to time, changes and modifications in such agreement when, in its opinion, a coordinated service in the use of its tracks and facilities makes such changes and modifications necessary."

The foregoing quotation provides that the applicants must submit an operating contract to the Port District and the District must approve such contract as conditions precedent to the effectiveness of the agreement for use of Port District tracks. There is no indication anywhere in the record that such a contract has been submitted and

that the Port District has ever approved any operating contract among applicant railroads.

At the 1957 hearing, the applicants had submitted a memorandum of understanding among themselves as to the manner of operating the Port District tracks (Exhibit H-29), and their witnesses had described the details of such proposed operations. Briefly, each would operate its own trains (22 trains daily) into and out of the Port District yard (capacity 300 cars), and a joint engine would perform all switching within the yard and from and to the industries. While the Commission expressed satisfaction with such a plan, the Port District has never indicated its approval, as the June 12, 1961 agreement would require, and because of the unworkability of such plan, it is most unlikely that the District ever will approve such operating arrangements.

If the Commission should now approve the agreement with the Port District for use of its facilities without evi- [fol. 3267] dence as to an operating contract approved by the Port District, the Commission would thereby be delegating to the Port District the power to determine what operating arrangements may be performed to, from and on Port District property. In addition, the Commission, by approving Article III, Section 1, would thereby be delegating to the Port District the power to make changes in the operating arrangements as and when the District chooses. With such power to approve and change railroad operations to be performed on its property for railroad patrons, question arises whether the Port District would not thereby become a common carrier subject to the Commission's jurisdiction. Compare *Harris County Houston Ship Channel Nav. Dist. Operation,* 290 I.C.C. 83 (1953).

This illustrates the second deficiency of the petition earlier referred to.

Conclusion

The failure of the applicants to produce application and questionnaire data in respect of the June 12, 1961 agreement and their failure to file an application covering the contract for operations on Port District land constitute fatal omissions in their submissions to the Commission for authority to reach and serve the Lake Calumet area. In its entirety, the applicants' plan comprehended trackage rights to the vicinity of the lake and construction and operation of tracks up to Port District property, as well as occupancy and use of Port District Facilities. None of these aspects of the entire plan may be consummated unless and until the applicants have filed all of the required applications and made a complete presentation as to public interest, convenience and necessity. As the Commission stated in its report of October 5, 1959:

> [fol. 3268] "Orderly procedure dictates that all applications required to effect the entire plan be heard simultaneously, particularly, as here, where the evidence to be presented in support of the construction and trackage rights is identical." (307 I.C.C. 496.)

Wherefore, the Nickel Plate contends that the matters involved in the petition as of November 27, 1961 are disputed and do involve the public interest, and it is respectfully requested that the said petition be denied.

Respectfully submitted,

The New York, Chicago and St. Louis Railroad Company, By Thomas O. Broker, Attorney for Intervener.

3006 Terminal Tower
Cleveland 13, Ohio

Dated: December 15, 1961
Due date: December 20, 1961

[fol. 3269] Certificate of Service (omitted in printing).

[fol. 3270]

BEFORE THE INTERSTATE COMMERCE COMMISSION

(Letterhead of Illinois Central Railroad,
Chicago 5, Illinois)

[Stamp—The N.Y.C. & St. L.R.R. Co.—Received—Jan 3-1962—Law Department.]

December 28, 1961

F.D. No. 19538 (and related cases) ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.—CONSTRUCTION AND TRACKAGE RIGHTS—LAKE CALUMET HARBOR, COOK COUNTY, ILLINOIS

Mr. Harold D. McCoy, Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Sir:

This letter reply is addressed to the motion of the Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company, seeking information from applicant railroads in order to reply to applicants' petition for approval of an agreement with the Chicago Regional Port District.

Although Rock Island was invited to participate in the negotiations with the Port District, it declined to do so; nevertheless, it attempts to describe to the Commission the positions of the parties to the negotiations, their differences, the compromises, and the final agreement.

The reply filed by the Nickel Plate dated December 15, 1961, illustrates the inconsistency of Rock Island's position. On page 2 of its motion, Rock Island states:

> "• • • at the outset of the negotiations with the Port District • • • the applicants proposed the retention • • • of the agreement • • • providing for a ceiling on the payments to be made by the applicants for the use of the tracks, while the District proposed a minimum guarantee on the amount to be paid."

Rock Island next contends:

> "The minimum amount to be guaranteed *and the maximum amount* to be the ceiling in each case *was an amount equal to interest at 5%* on the value of the land to be used." (Emphasis supplied.)

[fol. 3271] In contrast, Nickel Plate, on page 3 of its reply, describes the agreement:

> "The consideration set forth in the lease previously approved by the Commission provided for a rental based on 5% of an unknown valuation of the leased property, *with a maximum payment* equal to ~~$2.00~~ per car *loaded or empty.*" (Emphasis supplied.)

As the Nickel Plate stated, the Commission approved the lease which provided for a *maximum* payment equal to $2.00 per car *loaded or empty,* the maximum was not the interest payment of 5% on the value of the land.

Nickel Plate's reply continues:

> "The current agreement in Article III, Section 1 now provides for the payment of $2.00 per car as a fixed minimum-maximum charge."

Nickel Plate inadvertently omitted the qualification "revenue cars," which represents a very material reduction in the maximum charges, which was substituted for the original agreement of $2.00 per car "loaded or empty."

Regarding Rock Island's request for information regarding the value of the tracks to be used, reference to the record before the Commission (Exhibit H-3) discloses the

actual cost of railroads, excluding land, was $747,184.04. What the value of the land under the tracks might be is conjectural and obviously subject to fluctuation depending upon the extent which the tracks may be put to use.

Using only the value of the tracks, a rental based on 5% thereof would approximate $37,500 per year. The increase in this figure would depend on the land appraisal.

Considering the reduction in the maximum charge from $2.00 per car, loaded or empty, to $2.00 per revenue car for the use of 10.6 miles of District tracks, and considering the approval in its order of October 5, 1959, by the Commission of the trackage charges to be paid to the Illinois Central of $2.00 per loaded car or locomotive for the use of 3.73 miles of main-line track, the trackage charges of $2.00 per loaded car and locomotive for the use of 2.91 miles of Kensington & Eastern track, the trackage charge of $2.50 per car loaded or locomotive for use of the .76 miles of Pennsylvania track extension, and 25 cents per loaded car or locomotive for use of .12 miles of Illinois Central extension track (see Exhibit 6 attached to original application), the reasonableness of the District charges should be obvious.

[fol. 3272] Regardless of the increase in the number of loaded cars entering and leaving the port, considering the line-haul revenues anticipated by the applicants, the $2.00 charge diminishes rather than grows in stature. Applicants believe the District should also benefit from increased traffic.

In the final analysis, the uncontroverted fact remains that the conformed copy of the agreement, which was offered by petition of November 27, 1961, for approval of the Commission is *more favorable* to applicants than the agreement approved by the Commission in its report of September 19, 1960.

Applicants again request the Commission to approve forthwith the revised and executed agreement.

Respectfully submitted,

WM. J. O'BRIEN, JR.

Certificate of Service (omitted in printing).

[fol. 3273]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY et al.
Trackage Rights.

ORDER—May 15, 1962

Upon consideration of the record in the above-entitled proceedings, including (1) the petition filed on December 1, 1961, by the Illinois Central Railroad Company, The Pennsylvania Railroad Company, the Chicago South Shore and South Bend Railroad Company, The Belt Railway Company of Chicago, The New York Central Railroad Company, and the Indiana Harbor Belt Railroad Company, applicants, for approval of an agreement for the non-exclusive use of the Chicago Regional Port District's railroad tracks and facilities, as modified, said agreement providing, among other things, for the execution by said railroad applicants of a further agreement for centralized supervision of the operation, maintenance and repair of

said tracks and facilities prior to said use agreement becoming operational; (2) the motion on December 11, 1961, of the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company, interveners in said proceedings that the Commission direct said applicants to furnish additional information, including a copy of said centralized supervision agreement, to permit said interveners to reply to said petition and for additional time in which to file said reply; and (3) the applicants reply to said motion; and

It appearing, That sufficient reason has been shown for requiring the submission of the centralized supervision agreement for consideration with the modified use agreement and for an extension of time for the interveners to file a reply to said petition;

It is ordered, That said applicants submit, for the consideration of this Commission with the said modified use agreement, 15 copies of said centralized supervision agreement and serve a copy of said agreement upon all parties to the proceedings;

It is further ordered, That the time within which said interveners may file a reply to said petition be, and it is hereby extended to expire 20 days from the date copies of said centralized supervision agreement are filed with this Commission and served upon the parties;

It is further ordered, That except to the extent granted hereinabove, said motion be, and it is hereby, denied, as the additional information requested is not necessary for a decision upon the petition.

By the Commission.

HAROLD D. MCCOY, Secretary

[fol. 3275]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY et al. Trackage Rights.

APPLICANTS' SUBMISSION IN COMPLIANCE WITH THE COMMISSION'S ORDER DATED MAY 15, 1962—Dated May 22, 1962

In response to a motion filed December 11, 1961, by the Chicago, Rock Island and Pacific Railroad Company, the Commission under date of May 15, 1962 ordered applicants to submit for the consideration of the Commission 15 copies of a centralized supervision agreement to which reference is made in applicants' agreement for the non-exclusive use of the Chicago Regional Port District's railroad tracks and facilities.

Rock Island, when it filed its motion had overlooked the fact that this centralized supervision agreement is already a part of this record. See Exhibit No. H-29 (Tr. 323-324) introduced by Witness Zimmerman. Rock Island did not cross-examine Witness Zimmerman (Tr. 724). Said cen-

[fol. 3276] tralized supervision agreement is described in the report of the Commission in this proceeding at pages 503-504, *Illinois Central R. Co. Construction and Trackage*, 307 I.C.C. 493. See also 312 I.C.C. 277, 281-282.

Applicants therefore believe that compliance with the Commission's order dated May 15, 1962 is achieved by reference to these portions of the record. The Commission and all parties to the record can thus utilize the present record.

Respectfully submitted,

Robert H. Bierma, Franklin C. Gagen, Martin J. Keating, Richard O. Olson, Edmund A. Schroer, Frank F. Vesper, Joseph H. Wright, William J. O'Brien, Jr., Attorneys for Applicants.

135 East Eleventh Place, Chicago 5, Illinois.

[fol. 3277] Certificate of Service (omitted in printing).

[fol. 3278]

BEFORE THE INTERSTATE COMMERCE COMMISSION

F. D. No. 19538, et al.

ILLINOIS CENTRAL RAILROAD COMPANY, et al.—Construction and Trackage Rights—Lake Calumet Harbor, Cook County, Illinois.

REPLY TO APPLICANTS' SUBMISSION OF MAY 22, 1962 IN ABOVE PROCEEDING STATED TO BE IN COMPLIANCE WITH ORDER OF THE INTERSTATE COMMERCE COMMISSION DATED MAY 15, 1962 AND SERVED MAY 21, 1962—Dated June 7, 1962

Comes now The New York, Chicago and St. Louis Railroad Company (hereinafter called "Nickel Plate"), and respectfully files this its reply to applicants' document dated May 22, 1962 and entitled "Applicants' Submission

in Compliance with the Commission's Order dated May 15, 1962."

General

In order to simplify this reply, Nickel Plate refers to and hereby reincorporates its reply dated December 15, 1961 to the petition dated November 27, 1961 of applicants for approval of an agreement with the Chicago Regional Port District for use of the latter's railroad tracks and facilities. Nickel Plate again reasserts all of the various contentions made by it throughout this proceeding with respect to deficiencies and errors in the various Commission reports and orders in these proceedings.

By way of brief review, applicants on or about November 27, 1961 filed a petition for approval of an agreement with the Chicago Regional Port District for use of the latter's tracks. On December 15, 1961 Nickel Plate replied to said petition and pointed out certain deficiencies in the agreement. By order dated May 15, 1962 and served May [fol. 3279] 21, 1962, the Commission ordered the applicants to serve 15 copies of a centralized supervision agreement among themselves covering operation, maintenance, and repair of Port District tracks. The applicants' submission, to which reply is herein made, stated that such centralized supervision agreement consists of Exhibit H-29 submitted in evidence in this proceeding in 1957; the applicants did not serve any copies of said exhibit with their submission.

Specifically, in reply to various statements in applicants' latest submission, Nickel Plate points out that it cross-examined witness Zimmerman at length (TR. 724-739). Nickel Plate also points out that the reference in applicants' submission to portions of earlier reports in this proceeding describing Exhibit H-29 do not include those portions of said reports which describe applicants' proposed plan of operations on Port District and facilities under Exhibit H-29; said plan of operations constitutes the working interpretation of the so-called memeorandum of understanding, Exhibit H-29.

The last sentence of the applicants' submission states that because of reference to Exhibit H-29, the memorandum of understanding, in the Commission's previous report, "The Commission and all parties to the record can thus utilize the present record." It is not clear from said statement whether the applicants are resting on the present record, for if so, their case is clearly deficient as shown hereinafter.

The Centralized Supervision Agreement—
Memorandum of Understanding—Exhibit H-29.

The applicants' submission states that the "centralized supervision agreement" is already in the record as Exhibit H-29. This exhibit consists of a memorandum of under- [fol. 3280] standing among the applicants that they will operate in the Port yard and between the yard and industries as a joint facility; the exhibit was received in evidence over the objection of Nickel Plate (TR. 790-791). As stated by the applicants, this memorandum is briefly described by the Commission in its report of 307 I.C.C. at pp. 505-506, including the following sentence:

> "Each of the railroads would deliver its inbound cars to and receive its outbound cars from the Port District yard facilities which are to be leased and operated by the applicants as a joint-switching facility."

It is to be noted from the exhibit that this memorandum is not an executed agreement although the Commission states it was "subscribed to in principle" by the applicants (307 I.C.C. 505). The fact is that said memorandum was not subscribed at all, and to state that it was subscribed to "in principle" would indicate that the parties are not necessarily agreed on details or specific provisions. Certainly, the applicants have not submitted evidence of authority from their boards of directors to execute such an agreement or to submit the same to the Commission for approval. Furthermore, applicants have not filed 15 copies, as required by the Commission's order dated May 15, 1962.

The proposed agreement dated June 12, 1961 between the Chicago Regional Port District and the applicants providing for use and occupancy of Port District tracks provides in Article III, Section 1, as follows:

> "Before this agreement shall become operative, THE RAILROADS which are parties hereto, shall submit to THE DISTRICT an agreement, in form and substance satisfactory to it, between said railroads providing for a centralized supervision of the operation, maintenance and repair of THE DISTRICT's track, appurtenances and facilities covered hereby; and THE DISTRICT retains the right to require, from time to time, changes and modifications in such agreement when, in its opinion, a coordinated service in the use of its tracks and facilities makes such changes and modifications necessary."

[fol. 3281] It is clear from the foregoing excerpt that approval by the Port District of the form and substance of a centralized supervision agreement is a condition precedent to the effectiveness of the agreement for the use and occupancy of the Port District tracks. There is no evidence in the record that the Port District has ever approved Exhibit H-29 or any other centralized supervision agreement, or any plan for serving the Port as described at 307 I.C.C. 508-512. The applicants have the burden of proof on such issue, and mere reference to Exhibit H-29 does not justify the Commission's assuming that the Port District has approved it. In this connection, it is to be noted that if Exhibit H-29 and the centralized supervision agreement referred to in the agreement with the Port District are the same and if the Port District had previously approved Exhibit H-29, it would have been a simple matter for the applicants so to state in their petition of November 27, 1961. Applicants should, therefore, furnish the date on which the Port District stated its approval (if it did) of Exhibit H-29 and also of the plan of operations thereunder.

The fact is that it is doubtful that the Port District has approved or will approve Exhibit H-29 with its provision for individual operation to and from the Port District yard, a total of 24 trains per day over the tracks of the South Shore and Port District facilities to and from the yard (see also 307 I.C.C. 512). As the interveners have consistently contended, this is a wholly impracticable operation not only within the Port area where the same track must also be used for industrial switching but also jeopardizing passenger operations on the South Shore tracks, which the applicants must use to reach the District.

[fol. 3282] Furthermore, it is most doubtful that the Port District would countenance any such memorandum or plan of operations very long, if at all, since such plan would foul every industrial switching lead in the Port even if it were physically possible to move such trains over the South Shore's passenger tracks and the single track leading to the Port yard, meanwhile switching Calumet Harbor Terminals en route. The Port yard has a capacity of 300 cars at most and was not constructed for the makeup and breakup of trains of numerous carriers as well as the lining up of cars for industrial switching. With trucks operating over the lead to the yard, the congestion would be beyond description.

This last paragraph points up another deficiency in the arrangement. The last portion of Article III, Section 1, quoted above, would authorize the District to change the centralized supervision agreement at will. If this arrangement is approved by the Commission, it would be a far-reaching delegation of the Commission's authority to the Port District. If, for instance, because of the impracticability of the operations as planned, or any other reason, the Port District should change the method of service so that train operations to and from the Port yard would be by a single agency (which is the present nature of Rock Island operations) and not by trains of the individual applicants, this would be a major modification of the centralized supervision agreement and of the trackage rights

which ought first to require Commission approval after the filing of appropriate applications. Said portion of the agreement with the Port District providing that the District may change applicants' operations should, if said agreement is otherwise approved, be deleted so that the Port District and the applicants, individually or collectively, may not make changes in the trackage rights, memorandum of understanding, and plan of operations as now [fol. 3283] described in the Commission's report without the prior obtaining of Commission approval.

The situation is most peculiar in the attempted delegation to the District of the control of railroad operations to, from, and within the Port area without subjecting the District to the Commission's jurisdiction—the District's approval of the operating agreement is a condition precedent to the effectiveness of the agreements between it and the railroads and also among the railroads, and the continued effectiveness of said agreements would depend upon the railroads' compliance with the District's decision as to how the railroad operations are to be performed.

There Is No Evidence That the Payments Under the Various Agreements Would Be Just and Reasonable.

Numerous contracts are involved in this proceeding, including trackage contracts among the applicants, the agreement for use and occupancy of Port District tracks, and the so-called memorandum of understanding among the railroads for operation of Port District tracks and facilities. The estimated amounts to be paid annually by the railroads individually and collectively under any or all the contracts are not shown anywhere in the record; in addition, of course, the applicants would assume their individual train and crew expenses to and from the Port yard.

The dilemma of the applicants is that if the volume of traffic predicted by them and the Port District materializes (76,500-77,500 cars by the end of 1962 [TR. 60-68; 114-123]), the consideration to be paid for trackage rights and

use and occupancy of Port tracks would be unreasonable. [fol. 3284] On the other hand, it would be surprising if estimates even for 1958 (27,000 cars) have yet been fulfilled, thereby showing no need for the applicants' service. Before approving the contract between the District and the railroads and any centralized supervision agreement, the Commission ought to know the volume of railroad and truck traffic, at least by number of railroad cars and trucks, annually since 1957.

Conclusion

Wherefore, it is respectfully submitted that the applicants have failed to comply with the Commission's order of May 15, 1962, particularly in that they have not submitted evidence that the memorandum of understanding, Exhibit H-29, is a binding contract and that the Port District has approved either the memorandum of understanding or applicants' plan of operations on Port District tracks and facilities to, from, and within the Port District yard. It is respectfully requested that the applications be dismissed.

Respectfully submitted,

The New York, Chicago and St. Louis Railroad Company, By Thomas O. Broker, Attorney for Intervener.

3006 Terminal Tower, Cleveland 13, Ohio.

Dated: June 7, 1962

Due Date: June 12, 1962

[fol. 3285] Certificate of Service (omitted in printing).

[fol. 3287]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY et al.
Trackage Rights.

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1. PETITION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND PULLMAN RAILROAD COMPANY, INTERVENERS IN OPPOSITION, FOR RECONSIDERATION OF THE ORDER OF THE COMMISSION DATED MAY 15, 1962 DENYING THEIR MOTION THAT THE APPLICANTS BE REQUIRED TO FURNISH CERTAIN INFORMATION TO THESE INTERVENERS.
2. REPLY TO THE APPLICANTS' PETITION FOR APPROVAL OF AN AGREEMENT FOR THE NON-EXCLUSIVE USE OF THE CHICAGO REGIONAL PORT DISTRICT'S TRACKS AND FACILITIES AS MODIFIED.
3. REQUEST FOR A HEARING.

PETITION FOR RECONSIDERATION—Filed June 11, 1962

Chicago, Rock Island and Pacific Railroad Company (Rock Island) and Pullman Railroad Company (Pullman)

respectfully petition the Commission for reconsideration of its decision of May 15, 1962 in the above entitled matter.

I.

The Commission erred in not granting the motion of Rock Island-Pullman that the Commission require the applicants to furnish certain information.

A.

[fol. 3288] The unnegotiated contract originally approved by the Commission in the order of October 5, 1959 contained a provision calling for a ceiling on rental payments.

In our petition for reconsideration (page 27) of the Commission's order of September 19, 1960, which again approved a non-existent contract, we told the Commission that this provision had been deleted in the agreement then being negotiated with the Chicago Regional Port District (Port District). However, with this knowledge before it and with no denial of the fact by the applicants, the Commission persisted in approving the non-existent contract.

The applicants, in their November 27, 1961 petition for approval of the contract for the use of the Port District's facilities, stated that the provision had been deleted with the result that the accounting difficulties under this basis would be virtually eliminated. On its face this statement is ludicrous. If the provision had been left in there would have been no accounting difficulties, although there might have been a little accounting required, but even this would have been trivial.

We stated, in our motion dated December 7, 1961, that the Port District wanted guaranteed minimum payments, that the applicants wanted a ceiling on payments, and that by way of compromise, the whole subject had been deleted. [fol. 3289] Did the applicants, in their reply to our motion, deny the accuracy of our statement of the reason for the deletion? Indeed, they did not. Instead, the applicants simply stated the Rock Island was not present at the negotiations, and then merely recited our "attempts to describe to the Commission the positions of the parties to the nego-

tiations, their differences, the compromises, and the final agreement".

If we were wrong, why didn't the applicants say so? Their silence is in fact proof that we were right. The Commission should have been interested in ascertaining the facts. However, the Commission closed that door. It erred when it refused to order the applicants to give information.

B.

The Commission should have required the applicants to furnish the value of tracks to be used and the amount of rent which will be paid. This information was requested and should have been given by order of the Commission.

Without this information the Commission cannot determine whether the aggregate of rent to be paid is fair.

In the applicants' reply to our motion, they correctly assumed that the value of the tracks should include the value of the land under the tracks.

[fol. 3290] They gave no reason for not giving the valuation (for the next five years) of tracks to be used. They gave no reason for not estimating the rent to be paid.

While the applicants made no estimate of value of tracks to be used for the next five years, they did give the value of the tracks in use for the last five years. They said that it was $747,184.04 (land value excluded). They could then have given the other information requested.

The applicants did state that the valuation of the land would fluctuate "depending upon the extent which the tracks may be put to use". On this theory, while they were replying, they should have told us what the traffic would be and what, therefore, the value of the land would be.

As a matter of fact, the value of the land would not vary.

C.

The cost of maintaining the tracks is a part of the rent. The Commission should be interested in this cost. What we said above in Section B applies here.

D.

In our motion dated December 7, 1961, we stated, with reference to one matter:

[fol. 3291] "In the enumeration of the changes made in the agreement, the applicants failed to call the attention of the Commission to that part of the provision of Article III, Section 1, reading 'Before this agreement shall become operative, THE RAILROADS which are parties hereto, shall submit to THE DISTRICT an agreement, in form and substance satisfactory to it, between said railroads providing for a centralized supervision of the operation, maintenance and repair of THE DISTRICT's track, appurtenances and facilities covered hereby; and THE DISTRICT retains the right to require, from time to time, changes and modifications in such agreement when, in its opinion, a coordinated service in the use of its tracks and facilities makes such changes and modifications necessary'.

We do not know whether such an agreement has been made and approved. Thus we do not know whether the agreement now before the Commission is operative according to its terms. If it has been executed and approved, it should be submitted to the Commission for approval.

The operating agreement will determine the method by which the rights granted the applicants by the agreement now before the Commission will be exercised. Thus the two documents considered together—one conferring rights and the second describing the method of their exercise, the execution and the approval of the second document being necessary to make the first operative—constitute or will constitute the record of the whole understanding of the parties and in fact, though not in form, are or will be one document. Indeed the contents of both documents might, with greater simplicity, have been incorporated in one document.

It follows that the applicants have submitted to the Commission only one-half of their agreement. The half they seek approval of is meaningless without the other half. The applicants have presented an incomplete document. Full information should be given."

In their reply to our motion of December 7, 1961, the applicants made no reference to this request for information.

[fol. 3292] The Commission, in its order of May 15, 1962, ordered the applicants to "submit, . . . 15 copies of said centralized supervision agreement".

The Commission must have assumed, as did we when we received a copy of the order, that this would assure the filing of copies of an executed agreement and evidence that the Port District was satisfied with the agreement.

In purported compliance with the Commission's order, the applicants, on or about May 23, 1962, filed a "submission" in which they stated to the Commission that Exhibit H-29, received in evidence during the hearing in October of 1957, was the document which the Commission ordered the applicants to furnish, and that further compliance with the order of the Commission was therefore unnecessary. They take the position that that document is already in the Commission's files.

The applicants do not accurately describe Exhibit H-29. In its order of October 5, 1959, the Commission, in discussing this agreement, stated that "The proposed joint-facility agreement was subscribed to in principle by all the applicants on September 4, 1957". Exhibit H-29 contained no signatures, and no contention was made by the applicants that it had been executed or that it was a binding contract. The applicants never disagreed with the Commission's description of it as an agreement "in principle".

[fol. 3293] We do not know whether, since that time, it has been executed by the parties to it, but we doubt that it has been executed by the parties. If it had been executed, the applicants would have filed 15 copies of it.

Since the contract for the use of the tracks and facilities of the Port District by the applicants, which is now before the Commission, provides, as stated above, that it will not become effective until the centralized supervision agreement has been submitted to the Port District by the parties, in form and substance satisfactory to the Port District, we submit that the referring of the Commission to Exhibit H-29—an unsigned document indicating agreement "in principle"—is not compliance with the order of the Commission that 15 copies of said agreement be filed with the Commission.

We again point out to the Commission that, in their reply to our motion of December 7, 1961, the applicants never mentioned Exhibit H-29 or our request for information. What a simple matter it would have been for them, at that time, to have stated that the centralized supervision agreement was already in the files of the Commission. The Commission would have been saved a great deal of trouble had that been done.

The error of the Commission in dealing with this matter was in not requiring the applicants to furnish full information on the operating agreement.

[fol. 3294]

Reply to the Applicants' Petition for Approval of an Agreement for the Non-exclusive Use of the Chicago Regional Port District's Tracks and Facilities as Modified.

The petition for approval of the contract should be denied.

A.

The petition does not contain sufficient information to justify approval of the contract. We have been handicapped in writing this reply because of a lack of information, which the Commission decided should not be given.

The contract previously approved by the Commission contained a provision for a ceiling on rental payments. This has been deleted in the new contract, the only reason

given by the applicants being that the deletion would virtually eliminate accounting difficulties. There was no denial in the applicants' reply of the contention set forth in our motion of December 7, 1961, that it was deleted as a compromise to eliminate the demand of the Port District for a guaranteed minimum rental.

In fact, the correctness of our position was acknowledged when, with respect to this matter, the applicants merely expressed wonder at our knowledge of the facts.

[fol. 3295]

B.

The applicants did not state the value of the tracks and land nor the amounts to be paid as rental during the next five years.

Thus, the Commission does not know whether the rent will be fair.

C.

The applicants did not justify the $2.00 per car charge in their petition nor did they justify it in the record.

In their reply to our motion they attempted to justify the charge on the ground that it was fairly comparable to the trackage charges made by the Illinois Central and Pennsylvania in their trackage contracts with each other and the other applicants.

We point out to the Commission that the level of these charges was not discussed or justified in the record; and the fact that such charges were approved by the Commission without support in the record does not provide support for the level of these changes.

[fol. 3296]

D.

The applicants gave no information to the Commission as to maintenance costs. The Commission does not know what these will be.

The trackage charges in the Illinois Central and Pennsylvania trackage contracts included maintenance expense.

E.

In their reply, the applicants boasted of the fact that charges on empty non-revenue movements had been eliminated.

The value of this change they did not state. In the absence of a showing of the value of this change, it should be disregarded.

In their petition the applicants enumerated some of the changes made in the contract. They did not specifically call the attention of the Commission to the elimination of the charge for empty cars. The importance they finally attached to this change was merely an afterthought.

The petition should be denied. For the Commission to approve the contract would simply compound the error of the Commission in approving the original applications without sufficient justification, including approval of the original unnegotiated contract.

[fol. 3297] Request for a Hearing

The only true solution is to have a hearing limited to the facts required to dispose of the applicants' petition for approval of the contract for the use of the Port District's tracks and facilities. This we request.

Respectfully submitted,

Bruce Dwinell, Theodore E. Desch, 1025 LaSalle Street Station, Chicago 5, Illinois; Joseph B. Fleming, John L. Bordes, Prudential Plaza, Chicago 1, Illinois; Attorneys for Chicago, Rock Island and Pacific Railroad Company and Pullman Railroad Company.

Dated at Chicago, Illinois this 7th day of June, 1962.

[fol. 3298] Certificate of Service (omitted in printing).

[fol. 3299]

(Letterhead of Illinois Central Railroad,
Chicago 5, Illinois)

[Stamp—The N.Y.C. & St. L. R.R. Co.—Received—June 13, 1962—Law Department.]

June 11, 1962

F.D. No. 19538 (and related cases) ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.—CONSTRUCTION AND TRACKAGE RIGHTS —LAKE CALUMET HARBOR, COOK COUNTY, ILLINOIS

Mr. Harold D. McCoy, Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Sir:

This letter reply is addressed to (1) petition of Rock Island and Pullman, interveners in opposition, for reconsideration of the order of the Commission dated May 15, 1962; (2) to the reply to the applicants' petition for an approval of the use of the Chicago Regional Port District tracks; and (3) to the request for a further hearing.

Under date of October 5, 1959, the Commission approved the applications of the applicants in the above-entitled proceeding. Petitions for reconsideration were filed by Rock Island and Pullman and denied. A supplemental report of the Commission in the above-entitled proceeding was issued on September 19, 1960. A petition for reconsideration was filed by Rock Island and denied by order of the Commission on April 18, 1961. On November 27, 1961, the applicants filed a petition for approval of an agreement for nonexclusive use of the Chicago Regional Port District's railroad tracks and facilities as modified. Under date of December 7, 1961, Rock Island and Pullman filed a motion in [fol. 3300] which it was requested that the Commission direct the applicants to furnish certain additional information. Under date of May 15, 1962, the Commission denied

this petition except that applicants were required to submit a centralized supervision agreement. Under date of May 22, 1962, applicants filed their submission in compliance with the Commission's order dated May 15, 1962. Under date of June 7, 1962, Rock Island and Pullman filed the further document described hereinbefore. This later document is similar in nature and content to the many other petitions filed by Rock Island and Pullman. It is essentially a successive petition on the same grounds as presented earlier and should be denied under Section 1.101(f) of the General Rules of Practice.

Under these circumstances, applicants request that their letter reply, dated December 28, 1961, be considered as its answer to this last filed document of Rock Island and Pullman. While much is said in this document about the modified agreement for the non-exclusive use of the Port District facilities, it should be emphasized again, as was stated in the letter reply dated December 28, 1961, that the modified agreement is more favorable to applicants than the agreement approved by the Commission in its report of September 19, 1960. In addition, while much additional information is allegedly sought as to the background of this agreement, it should be pointed out that Rock Island and Pullman, when they had the opportunity on cross-examination, did not concern themselves with any of the details now sought. See transcript, pages 713-714.

[fol. 3301] Applicants request that the relief sought in the document filed June 7, 1962, by Rock Island and Pullman be denied.

Respectfully submitted,

WM. J. O'BRIEN, JR.

Certificate of Service (omitted in printing).

[fol. 3302]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Service Date
August 30, 1962

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY et al.
Trackage Rights.

ORDER—August 23, 1962

Upon consideration of the record in the above-entitled proceedings including the document entitled "Applicants' Submission in Compliance With The Commission's Order dated May 15, 1962" filed by the applicants on May 24, 1962, the reply thereto of The New York, Chicago and St. Louis Railroad Company, filed June 12, 1962; the pleading filed June 11, 1962, by the Chicago, Rock Island and Pacific Railroad Company and the Pullman Railroad Company, incorporating a petition for reconsideration of the order of the Commission dated May 15, 1962, a reply to applicants' petition for approval of a modified lease agreement, and a request for a hearing; and the reply of the Illinois Central Railroad thereto, filed June 13, 1962; and

It appearing, That the document filed May 24, 1962 by applicants does not comply with the order of May 15, 1962, in that the exhibit therein referred to does not constitute an agreement between applicants and the Chicago Regional Port District, as contemplated by the said order;

It further appearing, That the Chicago Rock Island and Pacific Railroad Company and the Pullman Railroad Company have, in their petition for reconsideration and further hearing presented no error of fact or law with respect to the matters complained of, except in respect of applicants' failure to comply with the requirement of the said order of May 15, 1962 for submission of the said agreement, and have failed to show that a further hearing in the proceedings is warranted;

It is ordered, That the petition for reconsideration and request for further hearing be, and it is hereby, denied.

It is further ordered, That unless, within 30 days from the date this order is served, applicants submit the centralized supervision agreement, properly executed by all parties applicant and the Chicago Regional Port District, for our consideration in connection with the modified use agreement, consideration will be given to the entry of an order vacating and setting aside the order entered herein September 19, 1960, and denial of the applications.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 3304]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19538

ILLINOIS CENTRAL RAILROAD COMPANY et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Illinois.

Finance Docket No. 19742

BELT RAILWAY COMPANY OF CHICAGO Trackage Rights, etc.

Finance Docket No. 19921

MICHIGAN CENTRAL RAILROAD COMPANY et al.
Trackage Rights.

APPLICANTS' SUBMISSION IN COMPLIANCE WITH THE COMMISSION'S ORDERS DATED MAY 15, 1962 AND AUGUST 23, 1962—Filed September 26, 1962

Pursuant to the Commission's Order dated August 23, 1962, there is enclosed herewith a conformed copy of a centralized supervision agreement which has been properly executed by all parties applicant and the Chicago Regional Port District. There are enclosed fourteen (14) additional copies. See Exhibit No. H-29. See also *Illinois Central R. Co. Construction and Trackage,* 307 I.C.C. 493, 505-506; 312 I.C.C. 277, 281-282.

Respectfully submitted,

Robert H. Bierma, Franklin C. Gagen, Martin J. Keating, Richard O. Olson, Edmund A. Schroer, Frank F. Vesper, Joseph H. Wright, William J. O'Brien, Jr., Attorneys for Applicants.

135 East Eleventh Place, Chicago 5, Illinois.

[fol. 3305] Certificate of Service (omitted in printing).

[fol. 3306]

ATTACHMENT TO APPLICANTS' SUBMISSION ETC.

MEMORANDUM OF UNDERSTANDING among:

The Belt Railway Company of Chicago,
Chicago South Shore and South Bend Railroad,
Illinois Central Railroad Company,
Indiana Harbor Belt Railroad,
The New York Central Railroad Company, and
The Pennsylvania Railroad Company

concerning the manner in which those railroads shall operate the railroad facilities serving the Chicago Regional Port District or its tenants at the port facilities at Lake Calumet in the City of Chicago, State of Illinois.

It is the opinion of the above railroads that, while the creation of a great inland seaport in Chicago depends on available land adjacent to the deep water system, the ultimate development of such a port depends in a greater measure upon the land transportation facilities. Land can be created, but without a flexible, abundant, and dependable land transportation system any port will quickly reach the limit of its potential value to even the consumer public in the immediate area of that port. We are convinced that the Port of Chicago, or any port, cannot survive its competition if it is limited by service of one truck line or one railroad.

It is because of this conviction that we have seriously considered the ultimate requirements of the Port of Chicago upon the completion of the St. Lawrence Seaway and in the years of development ahead. We have concluded that the best interests of all concerned require the railroads serving the Chicago Port to coordinate their separate services, and we are unanimously in accord that we shall:

1. Perform all switching within the Port properties under a joint switching arrangement as follows:

(A) During the initial development period of the Port:

(1) Locomotives:

Each railroad will furnish a diesel switching locomotive for one year periods in the following order of rotation:

P. R. R.
I. C. R. R.
I. H. B. R. R.
The Belt Ry.
N. Y. C. R. R.
South Shore R. R.

[fol. 3307] Should the volume of switching service temporarily require more than one locomotive, the second locomotive shall be furnished by the railroad next in order of rotation, the third by the next succeeding railroad, and additional locomotives by the other railroads in like order.

Railroads furnishing locomotives shall provide such locomotives with fuel, sand, and other supplies; keep and maintain such locomotives in a good state of repair and running order; provide for their servicing and inspection; and furnish replacement locomotive on account of failure or inspections which cannot be made properly on Port property.

Railroads furnishing locomotives shall be paid daily rental rates determined in accordance with formula in Item 2 of the Schedule of Equipment Rentals and Other Rates of the General Managers' Association of Chicago currently in effect. Such rental rates shall apply from the time that locomotives enter upon Port property until they leave such property.

(2) Switching Crews:

Members of engine and switching crews shall be selected from such employes of the railroads.

(3) PERSONNEL, other than switching crews:

From the personnel of the said railroads there shall be selected supervisory, clerical, and such other personnel as may be deemed necessary consistent with good operation.

(4) WRECKING SERVICE AND TRACK REPAIR AND MAINTENANCE:

Railroads shall severally perform track or other maintenance work and provide wrecking service on Port property.

[fol. 3308]

(B) Following the initial development period and at such time as the railroads shall deem necessary or advisable:

(1) LOCOMOTIVES:

Locomotives shall be leased or purchased and, if purchased, each railroad shall advance an equal proportion of the purchase price and have an equal undivided ownership interest in such locomotives with each of the other railroads. (Interest, depreciation, taxes, insurance, or rental, if leased, on such locomotives, and all expense incident to the maintenance, repair, or operation of such locomotives shall be included in the joint expense to be assumed and borne by the railroads as hereinafter provided.)

Relief locomotives or extra locomotives required for temporary switching shall be rented from the railroads as provided in (A)-(1) above.

(2) SWITCHING CREWS:

Same as (A)-(2) above.

(3) PERSONNEL, other than switching crews:

Same as (A)-(3) above, except that a manager shall be appointed who shall have charge over the operations of the railroad service on the Port property.

(4) WRECKING SERVICE:

Railroads shall severally perform wrecking service on Port property at request of the manager.

(5) TRACK REPAIR AND MAINTENANCE shall be performed under the direction of the manager.

2. Each of the railroads shall deliver its inbound cars to and receive its outbound cars from the Port District at the Chicago Regional Port District yard facilities on Port property to be leased and operated by the railroads as a joint switching facility. Officer in charge of joint switching [fol. 3309] operations will designate tracks on which cars shall be delivered and received.

3. The railroads have, among themselves, agreed to enter into a mutually acceptable long term lease with the Chicago Regional Port District, covering the land and railroad facilities owned by said Port District. Railroads shall be severally and jointly bound by said lease and shall operate the joint properties as an unincorporated association governed by a Board of Managers composed of one representative of each railroad party to said lease.

It is further mutually agreed that such other railroads not herein named as have now or may later acquire connection with Port property shall be permitted to participate in this joint operation and shall acquire and assume the same rights and obligations as the railroads herein named with respect to the joint arrangement, PROVIDED, HOWEVER, that such additional railroads so admitted shall be required to reimburse the railroads herein named for such additional railroads' respective share of any funds already advanced by the railroads herein named.

In the event that any railroad elects to withdraw from the joint arrangement, the remaining railroads shall equally acquire any ownership interest of the withdrawing railroad with respect to the joint arrangement. Any withdrawing railroad shall not be readmitted to again participate in the joint arrangement except by unanimous

approval of the railroads then parties to the joint arrangement.

4. The joint arrangement herein contemplated under said association and the maintenance and use of tracks and facilities leased or provided by the railroads shall be conducted as joint facility operation. All funds required for any facilities which the railroads may be required to provide shall be with funds advanced in equal proportions by each of the railroads and each railroad shall have an undivided interest in such facilities with each of the other railroads. All other cost and expense incident to the joint arrangement shall be allocated on the basis of use. Use shall be determined by the ratio that the number of loaded cars delivered to and received from the Port District at the Chicago Regional Port District yard facilities on Port property bears to the total number of loaded cars delivered and received by all railroads on said yard facilities within the month in which the cost or expense is incurred. Expense of maintaining tracks and other facilities used jointly [fol. 3310] shall be adjusted at the end of each year so that each railroad will bear its proportion of such expense in the ratio that the total number of loaded cars delivered and received by it bears to the total number of loaded cars delivered and received by all of the railroads during such year.

Dated at Chicago, Illinois, as of Wednesday, September 4, 1957.

/s/ L. A. Evans
President, The Belt Railway Company of Chicago

/s/ E. W. Girton
Vice President, Chicago, South Shore and South Bend Railroad

/s/ J. H. Wright
Vice President, Illinois Central Railroad Company

/s/ E. C. JOHNSON
Vice President, Indiana Harbor Belt Railroad

/s/ E. C. JOHNSON
Vice President, The New York Central Railroad Company

/s/ H. W. LARGE
Vice President & Regional Manager, The Pennsylvania Railroad Company

Accepted by:

Chicago Regional Port District

/s/ MAXIM M. COHEN
General Manager